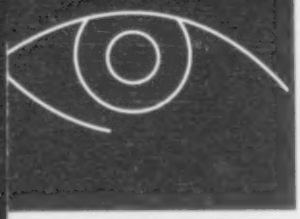
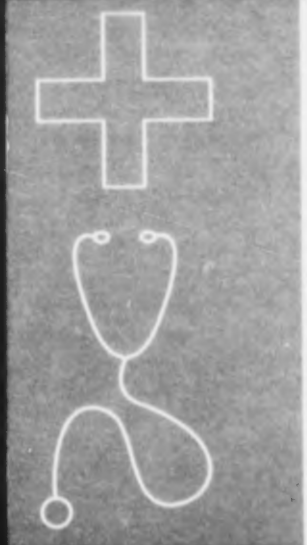


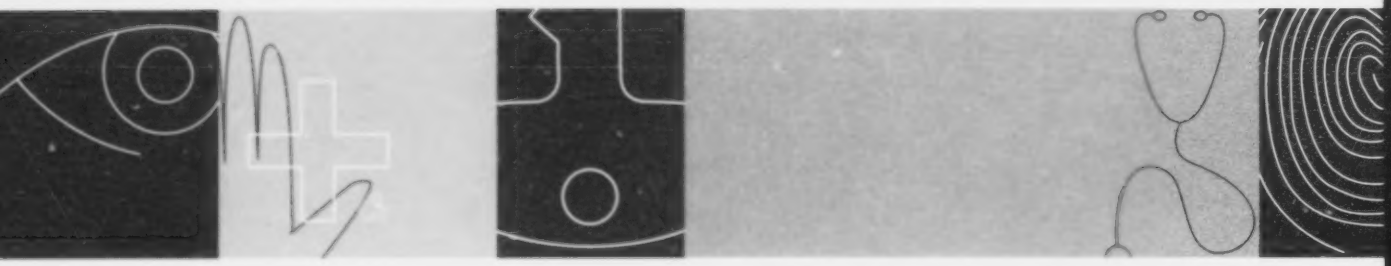
INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

Annual Report 2004



The **Personal Health Information Protection Act, 2004**: (a) to establish rules for the collection, use and disclosure of personal health information about individuals that protect the confidentiality of that information and the privacy of individuals with respect to that information, while facilitating the effective provision of health care; (b) to provide individuals with a right of access to personal health information about themselves, subject to limited and specific exceptions set out in this *Act*; (c) to provide individuals with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in this *Act*; (d) to provide for independent review and resolution of complaints with respect to personal health information....

THE PURPOSES OF THE *ACTS*



The purposes of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* are:

a) To provide a right of access to information under the control of government organizations in accordance with the following principles:

- information should be available to the public;
- exemptions to the right of access should be limited and specific;
- decisions on the disclosure of government information may be reviewed by the Information and Privacy Commissioner.

b) To protect personal information held by government organizations and to provide individuals with a right of access to their own personal information.

The purposes of the *Personal Health Information Protection Act* are:

To protect the confidentiality of personal health information in the custody or control of health information custodians and to provide individuals with a right of access to their own personal health information and the right to seek correction of such information, with limited exceptions.

105-06657/

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

June 22, 2005

The Honourable Alvin Curling
Speaker of the Legislative Assembly

I have the honour to present the 2004 annual report of the Information and Privacy Commissioner/Ontario to the Legislative Assembly.

This report covers the period from January 1, 2004 to December 31, 2004.

Sincerely yours,

Ann Cavoukian, Ph.D.
Commissioner

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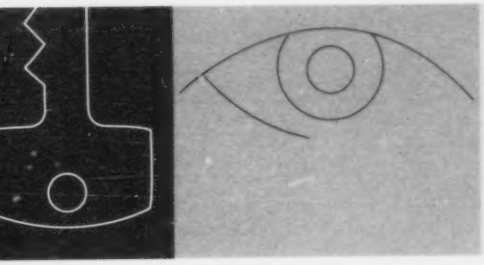


ROLE AND MANDATE

Ontario's *Freedom of Information and Protection of Privacy Act*, which came into effect on January 1, 1988, established an Information and Privacy Commissioner (IPC) as an officer of the Legislature to provide an independent review of the decisions and practices of government organizations concerning access and privacy. The Commissioner is appointed by and reports to the Legislative Assembly of Ontario and is independent of the government of the day.

The *Municipal Freedom of Information and Protection of Privacy Act*, which came into effect January 1, 1991, broadened the number of public institutions covered by Ontario's access and privacy legislation.

The *Personal Health Information Protection Act, 2004 (PHIPA)*, which came into force on November 1, 2004, is the third of the three provincial laws for which the IPC is the oversight agency. *PHIPA* governs the collection, use and disclosure of personal health information within the health care system.

The Information and Privacy Commissioner plays a crucial role under the three *Acts*. Together, the *Acts* establish a system for public access to government information with limited exemptions, and for protecting personal information held by government organizations at the provincial or municipal level and by health information custodians.

The provincial *Act* applies to all provincial ministries and most provincial agencies, boards and commissions and colleges of applied arts and technology. The municipal *Act* covers local government organizations, such as municipalities; police, library, health and school boards; public utilities; and transit commissions.

Freedom of information refers to public access to general records relating to the activities of government, ranging from administration and operations to legislation and policy. The underlying objective is open government and holding elected and appointed officials accountable to the people they serve.

Privacy protection, on the other hand, refers to the safeguarding of personal information – that is, data about individuals held by government organizations and personal health information in the custody and control of health information custodians. The *Acts* establish rules about how government organizations and health information custodians may collect, use and disclose personal data. In addition, individuals have a right of access to their own personal information – and are entitled to have these records corrected, if necessary.

The mandate of the IPC under the *Acts* is to provide an independent review of government decisions and practices concerning access and privacy. To safeguard the rights established under the *Acts*, the IPC has seven key roles:

- resolving appeals when government organizations refuse to grant access to information;
- investigating privacy complaints related to government-held information;
- ensuring that government organizations comply with the *Acts*;
- conducting research on access and privacy issues and providing advice on proposed government legislation and programs;
- educating the public about Ontario's access, privacy and personal health information laws and access and privacy issues;
- investigating complaints related to personal health information;
- reviewing policies and procedures, and ensuring compliance with *PHIPA*.

In accordance with the legislation, the Commissioner has delegated some of the decision-making powers to various staff. Thus, the Assistant Commissioner (Privacy), Assistant Commissioner (Access) and selected staff were given the authority to assist her by issuing orders, resolving appeals and investigating privacy complaints.

TABLE OF CONTENTS

COMMISSIONER'S MESSAGE 1

ACCESS AND PRIVACY BLUEPRINT FOR ACTION: A PROGRESS REPORT 4

ISSUES 7
Bringing Ontario's freedom of information laws into the 21st century 7
PHIPA: Privacy protection for your most sensitive personal information 9
Transparency in public matters 11
RFIDS: Homing in on privacy 13
Privacy notices: Must be clear and concise to be effective 15
Freedom of information pro bono project 17

COMMISSIONER'S RECOMMENDATIONS 19

REQUESTS BY THE PUBLIC 20

RESPONSE RATE COMPLIANCE 23

ACCESS
Appeals related to general information requests 32

PRIVACY
Complaints 36
Personal information appeals 37
High profile privacy incidents 43

JUDICIAL REVIEWS 45

WORKING TOGETHER 48

INFORMATION ABOUT THE IPC
Outreach program 49
IPC publications 51
IPC website 52
Monitoring legislation and programs 53
Organization chart 55
Financial statement 56
Appendix I 56

COMMISSIONER'S MESSAGE

2004 was a hallmark year for my office. The two most significant highlights were Premier Dalton McGuinty's immediate endorsement of my "culture of openness" recommendation in my last annual report, and the enactment of the much-needed *Personal Health Information Protection Act (PHIPA)*.

Culture of Openness

In my 2003 annual report, released in June 2004, I outlined a *Blueprint for Action* for the government of Ontario, providing eight recommendations designed to further advance open, transparent government and the protection of individual privacy in Ontario. I made it clear that the completion of this ambitious agenda might be addressed over a period of several years, but I was greatly encouraged by the reaction of Premier McGuinty, who issued a statement the same day endorsing my lead recommendation – on the need for the government to develop a culture of openness.

In the *Blueprint for Action*, I emphasized the importance of a central message being delivered to all levels of the Ontario government. We urged the Premier to publish an open letter to all ministers and deputy ministers that was similar in style and substance to the *freedom of information* (FOI) memoranda issued by then-U.S. President Bill Clinton and then-attorney general Janet Reno in 1993.

I must say how pleased I was when Premier McGuinty fully implemented this key recommendation. Within hours of the release of my annual report, the Premier issued a memorandum to all ministers and deputy ministers calling upon them, "to strive to provide a more open and transparent government."

This memorandum emphasized that the significance and the substance of the *Freedom of Information and Protection of Privacy Act (FIPPA)*, could not be overstated, and that the government "should ensure that information requested of it should continue to be made public unless there is a clear and compelling reason not to do so."

In furthering the objective toward a culture of openness, Management Board Chair Gerry Phillips and Attorney General Michael Bryant issued a follow-up memorandum emphasizing the importance of FOI legislation in the democratic process. The joint memorandum urged provincial ministries to go beyond the ceremonial and reactive access to information process and encouraged a proactive approach for disseminating information to the public. Additionally, the memorandum noted that although exemptions from disclosure will sometimes be necessary, discretionary exemptions should not be claimed solely on the basis that they are technically available; instead, they should be claimed only where there is a clear and compelling reason to do so.

Ann Cavoukian, Ph.D.
Information and Privacy
Commissioner, Ontario

I am confident that these two memoranda will prove to be seminal documents in a public policy culture shift, and will play a crucial role in ushering in a new era of openness.

I would also like to commend Premier McGuinty and Ministers Phillips and Bryant for their foresight and commitment to the principles and values of open government.

Personal Health Information Privacy Act

The other hallmark of 2004 was the ratification of the *Personal Health Information Protection Act* (*PHIPA*), which came into effect November 1, 2004. The first new privacy *Act* in Ontario in nearly 14 years, it governs the collection, use and disclosure of personal health information within the health care system.

The most relevant aspect of *PHIPA* is the implied consent model that applies to personal health information given to health care providers within the circle of care. This new *Act* strikes the right balance between allowing health care professionals to quickly pass on the information needed for patient care to another health professional, while otherwise strongly restricting unauthorized disclosure. I must stress that while *PHIPA* builds in extensive privacy protection, it was crafted in such a way as to avoid interrupting the actual delivery of health care services.

The initial response to *PHIPA* was overwhelming. In the final months of 2004, my office received more than 2,000 calls from the public and professionals in the health sector with questions regarding the many aspects and implications of *PHIPA*. In addition, we received requests for more than 50,000 copies of the special publications we produced about *PHIPA* (all of which are available on our website, **www.ipc.on.ca**).

I met with the senior leaders of Ontario's 22 regulatory colleges for health professionals, including the College of Physicians and Surgeons, the College of Nurses, the College of Pharmacists and the College of Chiropractors, and with associations such as the Ontario Hospital Association, the Ontario Medical Association and the Ontario Pharmacists' Association. Along with senior members of my staff, I made a number of presentations across Ontario to health professionals and health organizations on *PHIPA*, including the Federation of Regulatory Health Professionals.

My philosophy on working with health care custodians can be summarized in the "3 Cs:" co-operation, consultation, and collaboration. Since the implementation of *PHIPA*, I have spoken face-to-face with numerous hospital officials, doctors, dentists, nurses and other health care professionals regarding the new health information privacy *Act*. I am happy to report that virtually all of these professionals have shown great interest in learning about the requirements of *PHIPA* and in developing best practices for their respective areas.

High Profile Privacy Incident

The most high profile privacy incident of 2004 occurred in November. The IPC was notified by the Ministry of Finance (ministry) and Management Board Secretariat (MBS) that there had been a breach of the *Freedom of Information and Protection of Privacy Act*.

The ministry informed the IPC that the cheque stubs on more than 27,000 cheques mailed out by the Shared Services Bureau (SSB), part of MBS – to recipients under the *Ontario Child Care Supplement for Working Families Program* – included the name, address and Social Insurance Number of another recipient, as well as each recipient's own personal information. In all but seven cases, the personal information of a recipient was printed on one other cheque stub. However, one recipient's name, address and SIN appeared on the stubs of 220 other cheques.

The IPC's investigation into this breach, with the full co-operation of the ministry, MBS, and the SSB, determined that the incident was triggered by the implementation of a software system upgrade, which caused a spacing problem in the printing of each cheque stub. I made a number of recommendations that the ministries quickly acted upon.

I commend the ministry and MBS for taking responsible measures by immediately notifying my office of the situation and quickly notifying the cheque recipients about the privacy breach, as well as immediately moving to implement the recommendations I made.

Public Surveillance Cameras

In 2001, the IPC published *Guidelines for Using Video Surveillance Cameras in Public Places* (the *Guidelines*) to provide a framework of privacy safeguards for government institutions to follow when considering video surveillance programs. Over the past several years, Ontario municipalities have been considering with increasing frequency the implementation of video surveillance technology for crime control and public safety purposes. To achieve these objectives, street video surveillance programs located in downtown areas have been introduced in several municipalities.

We have recently become aware that local businesses are beginning to express an interest in operating comprehensive street video surveillance systems for security reasons. We have no objection to the participation of businesses in public video surveillance systems – and, in fact, we support their participation, as they are stakeholders in such programs. However, public areas and streets are the domain of all citizens and the collection of images of individuals who are traveling in public areas has important privacy implications. Further, crime control and the safety of public spaces are the responsibility of local government. Accordingly, it is our position that, if justifiable, video surveillance of public streets should only be undertaken by government institutions whose responsibility it is to ensure compliance with the *Municipal Freedom of Information and Protection of Privacy Act* and the IPC's *Guidelines*.

Looking Forward

For 2005, I am renewing my commitment to working towards three important objectives. These include:

- the introduction of a made-in-Ontario privacy law that would apply to the full provincially regulated private sector;
- the long-awaited "substantial similarity" ruling with regard to *PHIPA*; and
- a more open and transparent government.

Current Ontario privacy laws cover the provincial and municipal public sectors and the full health sector, while the commercial portion of Ontario's private sector is regulated under the federal *Personal Information Protection and Electronic Documents Act* (*PIPEDA*). There is, however, a real need for an Ontario privacy law that would cover the private sector. All of Canada's other large provinces – Quebec, Alberta and British Columbia – have introduced their own private sector privacy legislation. Ontario, with the largest number of registered private businesses, is left with its commercial sector under a federal law. For efficiency, clarity and consistency (rather than having some sectors covered by a federal privacy law and others by provincial laws), and to extend privacy laws to non-government organizations, which currently do not fall under any privacy law, Ontario needs made-in-Ontario privacy legislation that would cover the full private sector. I call upon Premier McGuinty to make a commitment to developing a private sector privacy law in 2005.

Now, the second objective. The federal government has issued a draft Order in Council exempting health information custodians from the operation of *PIPEDA*, and solicited comments on the draft Order. It is my belief that we will soon see a final Exemption Order recognizing the substantial similarity of *PHIPA* to *PIPEDA*, so that health information custodians covered by *PHIPA* will not also be subject to *PIPEDA*.

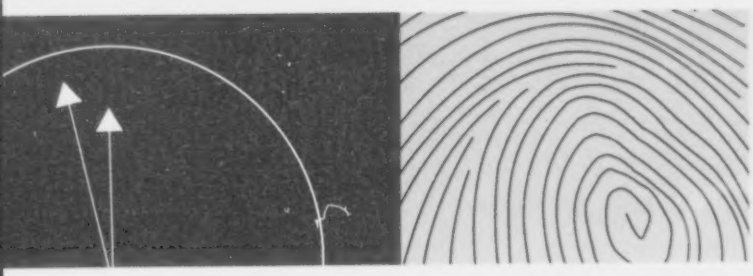
I am looking forward to the Order as my office has worked very hard toward this particular goal. I have written numerous letters to senior government officials, including the Minister of Industry and the Federal Privacy Commissioner, asking for their consideration in this matter, and I believe that the fruit of this labour will be soon in coming.

The third objective for 2005 builds on the government commitment to enhancing a culture of openness in Ontario. I reiterate my support and commendation for the Premier's memorandum and the subsequent joint communication from the Chair of Management Board and the Attorney General on this subject. Central to these messages was the need for government staff, in responding to freedom of information requests from the public, to claim discretionary exemptions only where there is a clear and compelling reason to do so. This is a powerful signal to public servants that release of information to the public should be the operational "default." It will be my expectation during 2005 that access to information will not be refused simply because a discretionary exemption can be applied. Rather, in reviewing those cases where access has been denied through the application of discretion, we will be looking for clear and compelling bases for denial.

Personal Thanks

This year, my first thank-you goes to Assistant Commissioner Tom Mitchinson, who retired at the end of December, for his many, many contributions to the IPC and to Ontarians. Among the first employees of the IPC, "Mitch," as I fondly called him, began his career with us in 1988 as Executive Director and served as Assistant Commissioner from 1991 onwards. In so many ways, Mitch was an invaluable asset to this office and we wish him all the best in his retirement.

I would also like to give my sincere thanks to all the staff in my office. The year 2004 proved to be one of the most demanding in recent memory, with ever mounting expectations placed upon this office. I consider myself very fortunate to have such a talented and dedicated staff. Everyone at the IPC takes their responsibilities, and the mandate of this office, very seriously on behalf of the people of Ontario. I am very proud of my team and am grateful to have the opportunity to work with such professional people in support of open government and the protection of privacy. My heartfelt thanks to you all. You're the best!



ACCESS AND PRIVACY BLUEPRINT FOR ACTION: A PROGRESS REPORT

In my last annual report, I set out a *Blueprint for Action* for the new Ontario government on access and privacy issues.

In particular, I made eight recommendations that were designed to enhance open, transparent government and the protection of individual privacy in Ontario. I emphasized that not all of these reforms needed to be made right away. During the past year, we have seen significant action on some of these recommendations, while other reforms remain on the government's agenda but have not yet been implemented.

Culture of Openness

Our *Blueprint for Action* urged the Ontario government to take steps to establish a new culture of openness. In particular, we recommended that Premier Dalton McGuinty issue an open letter to all ministers and deputy ministers that was similar in style and substance to the freedom of information (FOI) memoranda issued by then-U.S. President Bill Clinton and then-attorney general Janet Reno in 1993.

The government has fully implemented this recommendation. Within hours of the release of my 2003 annual report on June 15, 2004, the Premier sent a memorandum to all ministers and deputy ministers that urged them to "to strive to provide a more open and transparent government" and emphasized the importance of the *Freedom of Information and Protection of Privacy Act* (*FIPPA*).

On December 1, 2004, Management Board Chair Gerry Phillips and Attorney General Michael Bryant issued a follow-up memorandum that emphasized the importance of FOI legislation in the democratic process. It urged ministries to go beyond the formal, reactive access to information process and to proactively disseminate information to the public. Equally important, it noted that although exemptions from disclosure will sometimes be necessary, discretionary exemptions should not be claimed solely on the basis that they are technically available; instead, they should be claimed only where there is a clear and compelling reason to do so.

In our view, these two memoranda are groundbreaking documents which will play a crucial role in ushering in a new culture of openness. We applaud the Ontario government for swiftly implementing this recommendation.

Private Sector Privacy Legislation

The federal *Personal Information Protection and Electronic Documents Act* currently applies to the private sector in Ontario and all other provinces that have not enacted "substantially similar" legislation. In our *Blueprint for Action*, we urged the Ontario government to bring forward a made-in-Ontario privacy law that would apply to the provincially regulated private sector. This has yet to happen.

The necessity for enacting a made-in-Ontario privacy law remains in need of action. Although Quebec, Alberta and British Columbia all have their own private sector privacy legislation, provincially regulated businesses in Canada's most populous province are still subject to federal privacy legislation. The Ontario government should model a provincial privacy bill after comparable private sector privacy laws that were enacted in Alberta and British Columbia. This would ensure that companies with operations in all three provinces face a consistent set of rules.

Open Meetings

We recommended that the Ontario government introduce a comprehensive "open meetings" law. In October 2004, Liberal MPP Caroline Di Cocco introduced Bill 123, the *Transparency in Public Matters Act, 2004*. This bill captures many of the principles that are key to an effective and meaningful open meetings law. We are pleased that a number of senior cabinet ministers and opposition politicians have expressed support for the bill, which has the potential to transform Ontario into one of the leading jurisdictions in North America when it comes to open, trans-

parent and accountable government. In a separate article in this annual report, we outline our reasons for strongly recommending that the Ontario government pass the bill into law after it has had the benefit of a thorough vetting by the Legislative Assembly of Ontario.

Chief Privacy Officer

We called on the Ontario government to appoint a chief privacy officer (CPO) for the province. The CPO would be responsible for acting as an internal advocate for privacy at the highest levels and ensuring that government programs are designed in a manner that protects and enhances the privacy rights of Ontarians.

On December 16, 2004, Management Board Chair Gerry Phillips announced in the legislature that the government would consider the feasibility of creating the position of CPO for the province of Ontario. This person would recommend how the government could strengthen its policies and practices to ensure the protection of personal information in all government operations. Minister Phillips' announcement was in response to the IPC's *Special Report to the Legislative Assembly of Ontario on the Disclosure of Personal Information by the Shared Services Bureau, Management Board Secretariat, and the Ministry of Finance*. We are pleased that the government is closely examining the feasibility of appointing a CPO and recommend that such an individual be appointed by the end of 2005.

Fees

Our *Blueprint for Action* noted that although we support the user-pay principle for accessing government-held information, we believe that the fee structure implemented in 1996 discourages government accountability and fetters the right of Ontarians to access and correct their own personal information. The *Savings and Restructuring Act, 1996* brought in higher user fees for FOI requests and appeals. An individual is now charged $5 for each access request, including a request for his or her own personal information. If an individual appeals an institution's decision to the IPC, the fee is $10 for appeals relating to access to or correction of one's own personal information and $25 for appeals relating to access to general records. The new fee structure that was implemented in 1996 also eliminated the two hours of free search time that was previously available.

The Ontario government has not yet taken any action to reform the regressive fee structure that was implemented in 1996. Consequently, we reiterate our *Blueprint* recommendation that the government eliminate the fees charged for personal information requests and appeals, and restore the two hours of free search time.

Contentious Issues Management

Our *Blueprint for Action* expressed concern about "contentious issues management," a politically driven process that involved putting potentially controversial FOI requests on a different and potentially slower track than standard FOI requests. We urged the Ontario government to reform the contentious issues management process and put in place a policy that makes it clear that:

- The 30-day statutory timeframe for processing FOI requests must take precedence over any process for managing contentious issues; and
- The names of requesters shall only be disclosed on a "need-to-know" basis within a ministry.

It is our understanding that the Ontario government still has a process in place to give ministers a "heads up" about the disclosure of potentially controversial records under FOI, which, on its own, is not a problem. We are pleased that, over the past year, we have not seen any evidence to show that this process is having an adverse effect on the 30-day statutory timeframe for responding to FOI requests, or that the names of requesters are being disclosed inappropriately. Although we do not have any further recommendations in this area, we urge the government to continue to be vigilant about ensuring that politically driven processes do not interfere with the public's right to access government-held records.

Employment Information of Public Servants

In 1995, the Ontario government enacted the *Labour Relations and Employment Statute Law Amendment Act* (Bill 7), which contained provisions that excluded a wide range of employment-related records about public sector employees from the scope of the *Freedom of Information and Protection of Privacy Act* and the

Municipal Freedom of Information and Protection of Privacy Act (the *Acts*). Public sector employees are currently precluded from obtaining access to most employment-related records about themselves, and from filing a privacy complaint if they feel that their personal information has been improperly collected, used, disclosed or retained.

In our *Blueprint for Action*, we recommended that the Ontario government restore the access and privacy rights of public sector workers by repealing the Bill 7 provisions of the *Acts*. This reform has not yet been implemented. We urge the government to take action on this recommendation in 2005.

Public Registries

In our *Blueprint for Action*, we urged the Ontario government to initiate a public consultation process to identify how the *Acts* can be amended to properly deal with the treatment of publicly available personal information in an electronic world. The largest collections of publicly available personal information are known as public registries and include the land registry, the Personal Property Security Registration system, election finance records and the property assessments rolls.

We warned that if the entire content of such registries is readily accessible in electronic format, the personal information of citizens can be easily retrieved, searched, sorted, manipulated and used for purposes (e.g., identity theft) that have no connection to the original purpose for which the information was collected.

A 2004 Divisional Court decision has provided greater clarity to institutions that administer public registries. The Court quashed an IPC order that had directed the Municipal Property Assessment Corporation to disclose an electronic version of the province's property assessment rolls to a collection agency. It noted that the database would be used by the requester for purely commercial purposes and stated that "there are no compelling public policy considerations that override the privacy interests at stake in the case before us."

The Court distinguished this case from a 2002 Divisional Court decision, which involved a newspaper reporter who had requested access to an electronic database held by the City of Toronto that contained personal information about election campaign contributors. In that case, the Court ordered that the database be disclosed to the requester. It emphasized the importance of transparency in the democratic process and observed that "public accountability in the election process should, where necessary, override the privacy interests at stake…."

Although these court decisions clarify whether and in what circumstances public registries may be released in electronic format, we would note that there are a handful of jurisdictions around the world, such as New Zealand and the Australian state of New South Wales, which have put in place special statutory rules governing public registries. Consequently, we recommend that the Ontario government consider whether implementing similar rules in Ontario could alleviate remaining concerns about public registries and strike a better balance between the access and privacy interests at stake.

BRINGING ONTARIO'S FREEDOM OF INFORMATION LAWS INTO THE 21ST CENTURY

When passed in 1987, Ontario's *Freedom of Information and Protection of Privacy Act* (the *Act*) was among the most progressive of the day. Most jurisdictions, both in Canada and abroad, had not yet formally recognized the value of freedom of information by enacting legislation. Today, the landscape has changed. More than 50 countries have adopted FOI laws, and an additional 40 are in the process of doing so. In Canada, the governments of every province and territory are now subject to freedom of information legislation.

Since enactment, Ontario's provincial *Act*, and the subsequent *Municipal Freedom of Information and Protection of Privacy Act*, which came into force January 1, 1991, have enhanced government openness and transparency by making the vast majority of government records subject to public scrutiny. Through the two *Acts*, the public has been able to gain access to important information concerning policy proposals, contracts and spending priorities.

The current provincial government was elected on a platform that included a commitment to enhance openness and promote democratic renewal. One of the ways that the government has chosen to act on this mandate is to formally recognize the value of freedom of information legislation (see the *Access and Privacy Blueprint for Action: A Progress Report*).

While these initial developments are positive, further steps can be taken, including amending the *Acts*, to ensure that measures aimed at enhancing transparency and openness are enacted into law. This would bring Ontario's legislation into line with more recently enacted freedom of information legislation across Canada.

Scope of the *Acts*

One of the foundations underlying freedom of information is the principle that organizations that exist by virtue of public funding should be subject to public scrutiny through FOI laws. Ontario would be able to extend the application of this principle by extending the range of entities that are subject to the *Acts*.

Recently, the Ontario government extended the application of the provincial *Act* to the publicly owned hydro utilities, Hydro One Inc., and Ontario Power Generation Inc., a step the IPC had been calling for since the main successor companies to Ontario Hydro were moved outside FOI by the previous government. And, in its spring 2005 budget bill, the government announced plans to bring universities under the *Act*, which the IPC has been urging for a number of years.

In the interests of promoting greater accountability and transparency, the government should expand the scope of coverage of the *Acts* by greatly expanding the range of organizations that are subject to the provisions. For example, the provincial *Act* applies only to ministries of the government of Ontario and any agency, board, commission, corporation or other body designated as an institution under the regulations. A number of organizations that are recipients of large transfer payments from the government are not subject to the *Acts*, and therefore, the records of these organizations are not subject to scrutiny by the public.

Recently, the provincial government passed the *Audit Statute Law Amendment Act, 2004*, which extended the power of the Auditor General of Ontario to conduct value-for-money audits of institutions in the broader public sector, including audits of hospitals and universities. Similar amendments should be undertaken with respect to records under Ontario's FOI regime.

The FOI laws in a number of other jurisdictions in Canada are more inclusive. For instance, in British Columbia, that province's statute applies to all organizations that are deemed to be "public bodies," which includes hospitals, universities and British Columbia's Child Protection Services (which is the equivalent of Ontario's Children's Aid Societies). None of these entities are covered under Ontario's FOI legislation, and subjecting these organizations to freedom of information requests would help shed light on the operations of these organizations.

Make employment records subject to the *Act*

In 1995, the Ontario government of the day passed Bill 7, the *Labour Relations and Employment Statute Law Amendment Act*. That law included amendments to Ontario's freedom of information legislation that removed a wide array of records concerning employees and labour relations from the scope of the *Acts*. By virtue of this amendment, employees of provincial and municipal government organizations are no longer entitled to submit requests for access to their own personnel files.

In addition, because the exclusion of records applies to the privacy, as well as the access provisions of the *Acts*, the personal employment information of employees of government organi-

zations is not subject to the statutory privacy protections in the legislation.

This exclusion is particularly troubling when the employment information of employees of federally regulated organizations is subject to privacy legislation – the *Personal Information Protection and Electronic Documents Act (PIPEDA)*.

Under *PIPEDA*, employees of federally regulated organizations (such as banks and airlines) have a right of access to, and may seek correction of, their personal employment information, and the right to file privacy complaints related to the workplace. Public sector employees of the Ontario government and municipal organizations covered under the *Municipal Freedom of Information and Protection of Privacy Act* do not possess similar rights. The access and privacy rights of public sector workers should be restored through the repeal of the Bill 7 provisions.

Proactive disclosure

While making records available to the public in response to formal access requests is an important component of a culture of openness, government organizations should also strive to enhance transparency whenever possible by routinely and proactively disclosing relevant information, even in the absence of formal freedom of information requests.

From an international perspective, the connection between the Internet and freedom of information legislation is not new. In the United States, departments of the federal government are now required to create online "electronic reading rooms," where the public is able to access information that has been the subject of multiple FOI requests.The government of Quebec recently introduced Bill 86, which would amend that province's access to information legislation to require all public bodies to implement "information distribution policies." These policies would establish which documents held by government should be proactively disclosed, and specifically notes that certain information should be made systematically available through the Internet. A similar scheme should be adopted in Ontario.

Conclusion

The IPC is pleased with the steps the provincial government has taken on freedom of information. However, significant enhancements to the legislation are needed to bring Ontario's freedom of information laws up to the standards of the 21st century.

PRIVACY PROTECTION FOR YOUR MOST SENSITIVE PERSONAL INFORMATION

Personal health information – among the most sensitive of all personal information – finally has long-awaited statutory privacy protection.

The *Personal Health Information Protection Act, 2004* (*PHIPA*), the first new privacy *Act* in Ontario in nearly 14 years, came into effect Nov. 1, 2004. The IPC, which has been calling for such a law for years, has been designated as the oversight body responsible for its enforcement.

PHIPA provides a set of comprehensive rules that apply across Ontario's health sector, governing the collection, use and disclosure of personal health information. It is based on internationally recognized fair information practices, including accountability, consent, accuracy, limiting collection, use, and disclosure, and establishing security safeguards.

The law, with very limited exceptions, provides individuals with the right to access their own personal health information, and to seek correction of it. And, anyone who feels that a health information custodian has inappropriately collected, used or disclosed his or her personal health information has the right to make a complaint to the IPC. Individuals can also file a complaint if denied access to their own personal health records, or correction of those records.

Overall, *PHIPA* strikes the right balance between the legitimate need of health professionals to collect, use or disclose personal health information and the need to maintain the confidentiality of such sensitive information. It accomplishes this by giving individuals greater control over how their personal information is handled while, at the same time, providing health information professionals with a flexible framework to access and use health information as necessary – but just within the health care system.

PHIPA sets out specific limitations and restrictions on how personal health information is to be managed by health information custodians. It applies to all types of personal health information in the custody and control of health care providers and other health information custodians.

One of the unique features of this law is the implied consent model that enables health information custodians to rely on implied consent to collect, use and disclose personal health information when providing health care (such as when a patient is referred to a specialist or sent for x-rays). Custodians and researchers are also permitted to use and disclose personal health information for research purposes if the approval of a research ethics board is obtained and other requirements are met.

Another critical feature of *PHIPA* is that all health information custodians are required to implement policies and safeguards to ensure that security standards are in place. Custodians are also required to be open about their information practices and to provide notices about the anticipated uses and disclosures of personal health information.

Compliance

As part of her oversight responsibilities, the legislation gives the Commissioner the authority to investigate, adjudicate and issue orders to resolve complaints filed against health information custodians.

Commissioner Ann Cavoukian has appointed Ken Anderson as the Assistant Commissioner for health privacy to assist in issuing orders, resolving complaints and investigating health privacy breaches.

The Commissioner is required, in consultation with the Assistant Commissioner for health privacy, to provide information on the number and nature of complaints received by the Commissioner under *PHIPA* – and the disposition of these – in an annual report. There were no complaints received during the first two months that *PHIPA* was in force (through December 2004).

Copies of all 2005 orders to date and summaries of complaints resolved through mediation are posted on the IPC's website, **www.ipc.on.ca**.

Over the latter half of 2004, the IPC produced seven publications devoted to *PHIPA* (all are available on the website) and continues to produce new publications related to the *Act*. In the final four months of 2004, approximately 70,000 copies of these publications were either distributed by the IPC or downloaded from its website.

Besides the extensive publishing program, the IPC also undertook a number of other significant steps to help health information custodians and the public understand their rights and obligations under *PHIPA*. These included an extensive speaking program under which the Commissioner and senior staff made presentations across Ontario; a series of meetings where the Commissioner and Assistant Commissioner for health privacy

met with the regulatory colleges for health professionals and with the leaders of professional associations; and extensive participation in a series of information sessions on *PHIPA* that the Ministry of Health and Long-Term Care scheduled in major cities across Ontario. As well, the IPC set up a system to respond to the more than 2,000 calls and e-mails it received over the final four months of the year about *PHIPA*. And, forms for filing *PHIPA* complaints to the IPC and information on new protocols and other processes were developed and posted to the website.

As well as copies of all the IPC's *PHIPA* publications, the health privacy section of the IPC's website (accessible from the first page), includes copies of many of the Commissioner's *PHIPA* presentations, forms, flow charts showing how *PHIPA* complaints are dealt with, orders and mediation summaries, news releases related to *PHIPA*, links to related sites and more.

TRANSPARENCY IN PUBLIC MATTERS

In both the United States and Canada, the principle of open government is a linchpin of democracy because it allows citizens to scrutinize the activities of elected officials and public servants to ensure that they are acting in the public interest.

One pillar that supports open government is freedom of information legislation, which gives people the right to access government-held information. A second pillar is open meetings legislation, which ensures that public bodies conduct their meetings in public, except in limited and specific circumstances.

In the U.S., the federal government and all state governments have enacted open meetings laws that guarantee, with limited exceptions, that the public can attend meetings of public bodies. These laws provide citizens with the right to complain about open meetings violations by public bodies, and provide for remedies and penalties if a court or other oversight body determines that a violation has occurred.

In Ontario, the first pillar of open government has solid foundations. The *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* empower citizens to access records held by government, and the affected institutions have demonstrated their willingness to meet the requirements of the legislation.

But the second pillar that supports open government – requiring public bodies to conduct open meetings – is only partly built.

There is no comprehensive open meetings law in Ontario. Instead, rules governing meeting rules tend to be subsumed in various pieces of legislation governing a limited group of public bodies, such as municipal councils, police services boards and school boards.

That may be about to change. Liberal MPP Caroline Di Cocco has introduced a promising private member's bill that captures many of the principles that are key to an effective and meaningful open meetings law.

Bill 123, *Transparency in Public Matters Act, 2004*, was introduced in the Ontario legislature in October 2004 and has been referred to a standing committee of the legislature for further review. Although private member's bills are rarely enacted into law, Bill 123 appears to be headed in a different direction. The bill appears to have attracted support from senior government members as well as members in the opposition ranks.

Bill 123 would apply to designated public bodies and types of designated public bodies that are listed in the schedule to the bill, including the governing boards of hospitals, universities and colleges; municipal councils; police services boards; school boards and library boards. It would require designated public bodies to ensure that meetings are open to the public but allow meetings to be closed in limited and specific circumstances.

A designated public body would be required to provide the public with reasonable notice of its meetings, including a clear, comprehensive agenda of items that would be discussed. It would also be required to make minutes of its meetings available to the public at the same time as minutes are made available to the members of the designated public body.

From an open government perspective, the most attractive part of Bill 123 is that it includes enforcement mechanisms. The bill would provide members of the public with a legal right to complain if they believed that open meetings rules had not been followed. It would also establish an oversight body responsible for investigating complaints and resolving disputes. A person who believed a designated public body had contravened or was about to contravene the bill could make a complaint to the Information and Privacy Commissioner of Ontario.

The Commissioner would be empowered to review the complaint and to undertake a review on her own initiative. The Commissioner could also exercise various powers when reviewing a suspected contravention, including the power to enter and inspect premises, to demand production of things relevant to the review and to require any person to appear before the Commissioner to give evidence.

With respect to remedies, the Commissioner would have the authority to make certain orders after an investigation, including an order that voids a decision made by a designated public body at a meeting that did not conform to the requirements of the bill. Such an order would be based on a procedural violation of open meetings rules, not on the substance of the meeting itself. The public body would retain the authority to start over and make the same decision again, but this time in compliance with the law.

Bill 123 would also create certain offences that could lead to the imposition of a monetary penalty. It would be an offence to wilfully obstruct or attempt to mislead the Commissioner when she is performing functions authorized under the bill, or to wilfully

fail to comply with an order of the Commissioner. A person who was guilty of such an offence would be liable, on conviction, to a fine of not more than $2,500.

Amendments

Although Bill 123 is an excellent open meetings bill with clear rules and enforcement mechanisms, it can be improved in at least two ways. First, the list of designated public bodies and types of designated public bodies that are included in the schedule to the bill is narrow. The intent of the legislation could be better achieved if the scope of the bill were expanded to include other public bodies that each meet as a group for deliberation and decision-making, except for adjudicative bodies, such as the courts and administrative tribunals. These other bodies, not listed in the schedule to the bill, include organizations that deliberate and make decisions affecting citizens on a host of different issues, including the environment, the arts, economic development and transportation. The governing boards of these public bodies should be subject to all of the open meetings rules in Bill 123.

Second, the bill does not contain a rule that would prevent public bodies from slipping last-minute items onto an agenda without notifying the public. Hawaii's *Sunshine Law* stipulates that after an agenda has been filed, a board may not add an item if it is of "reasonably major importance" and action on this item by the board would affect a significant number of persons. Bill 123 should be amended to include a similar rule that would prohibit a public body, with limited exceptions, from considering business not included on a published agenda.

Bill 123 has the potential to enhance Ontario's position as one of the leading jurisdictions in North America when it comes to open, transparent and accountable government, and we endorse its passage.

RFIDS: HOMING IN ON PRIVACY

The introduction of RFIDs (radio frequency identifiers) on consumer products can potentially – without careful consideration of privacy implications – become a serious privacy threat.

"Radio frequency identifier" is a generic term for a variety of technologies that use radio waves to identify individual items. All RFID systems have two integral parts: a tag – a tiny computer chip with an antenna – and a reader. Readers generate radio frequencies that activate the chip, which in turn releases any information it holds to the reader. That information is then fed into a database that can be analyzed and networked or linked to other databases.

When such a system is used to track cases of cement bags through a supply chain – from a manufacturer, to the truck delivering the cement, to the construction site – there is little in the way of privacy concerns. Even when you pay for your gas with the wave of a card with an embedded RFID tag over a patch on the gas pump, privacy concerns remain remote.

Industry experts have said that proliferation of item-level RFID tags (on consumer goods) is at least five years away.

But they are already being used in ways that most people would not have foreseen even a few years ago. Test deployments and planned uses include:

- electronic article surveillance (in-store tracking of shopping carts and items; luggage entrusted to airlines);
- pharmaceutical tagging to reduce counterfeiting and fraud;
- convenience services (from RFID-enabled ski passes to vehicle access and gas payment tokens);
- consumer safety (tagging tires to expedite recalls).

When RFID technology finds its way into consumer goods, privacy concerns can quickly escalate. A tag on a consumer product could be linked to the purchaser at the time of sale if a credit card or loyalty card were used, and if the identifying information from the card registration were linked to the tag.

Such data linkage could establish that Sam Shopper, who bought a tag-bearing sweater using a loyalty card and later used the same card at the hardware store to pick up some tag-bearing supplies, has a demographic profile and individual characteristics that could be misused if the information came into the wrong hands. Even when used as intended, the information could reveal not just which products a consumer purchases, and how often those products are used, but even where a particular product – and by extension the consumer – travels, unknowingly encountering RFID readers along the way every time he wears that sweater. RFID-using organizations could sell or trade this information with others, often unbeknownst to Sam Shopper.

This marriage of chips to individuals concerns many, whether it is done through a loyalty or ID card or even imbedded under the skin, as in the case of selected senior staff working for Mexico's Attorney General and nightclub patrons at a Spanish establishment. In the consumer space, one of the most troubling future scenarios involves the use of RFIDs without consumer knowledge. The tags could each have a globally unique identifier and the information captured by readers could be fed into databases linked with other databases through personal identifiers.

It is essential that fair information practices commonly associated with privacy and data protection be applied in the development of consumer-based RFIDs, their related infrastructure, applications and networks, including:

Openness

Consumers should always be advised if there is an RFID tag on a product they purchase or are given, and its location on the product. They should be provided with:

- clear statements of purpose for the collection or linkage of personal information;
- assurances that the collection of personal information is limited to that required for the expressed purpose;
- a high level of accountability when it comes to an organization's management of personal information, including a simple complaint procedure.

Informed Choice, Access and Transparency

Controls must also be developed that would leave the consumer making the decision about:

- whether the chip is left **on** or turned **off** at point of sale;
- whether a chip is removed or remains on a purchased item;
- what information is presented to a reader, and under what conditions, if any, the chip remains active post-sale;

- what personal information, if any, is matched with the purchased product or service through data linkage, when and why.

Embedded Privacy Controls

Various types of technical controls that a chip can accommodate must be explored, including:

- password controls;
- the ability to physically disable and enable chips, or to block the transmission of data from it;
- mandatory default deactivation for certain categories of products;
- the creation of different frequencies for pre- and post-sale; and
- the introduction of certain levels of security on the chip itself.

Consumers have already indicated discomfort with the tracking of their movements through this technology, thanks to some early attempts to introduce it without privacy controls in place. Now is the time for business to ensure that privacy protections are built in at the design stage of any RFID systems to be used in the consumer space.

PRIVACY NOTICES: MUST BE CLEAR AND CONCISE TO BE EFFECTIVE

Do you read online privacy policies or brochures that you receive in the mail from your bank or insurance company? If you're a lawyer or policy analyst, you may relish the opportunity to scrutinize such notices, which often contain legal jargon and numerous clauses and sub-clauses. However, an increasing body of evidence shows that most individuals are turned off by such notices, and this can lead to an erosion of consumer trust in a company's business practices.

There is a movement afoot both globally and within Canada to take a "layered" approach to privacy notices, with an emphasis on developing "short notices." The first layer would be a user-friendly short notice written in plain language, which would be made available to individuals at their first point of contact with an organization. This concise and simple notice would help individuals to clearly understand what an organization does with their personal information. An organization would also give individuals the choice to access additional layers of information, which could include a longer, more detailed privacy statement or a brochure.

The growing movement to establish a global short privacy notice had its official birth at the 2003 International Conference of Data Protection and Privacy Commissioners in Sydney, Australia. At that conference, the Commissioners passed a resolution that endorsed the development and use of a condensed privacy notice that would be standardized across the globe. The resolution noted the importance of enabling individuals "to be well informed and able to exercise choices when the organizations with which they are dealing operate globally."

Since the Sydney conference, a working group of Commissioners (including this office), business leaders, lawyers and privacy practitioners have been hammering out solutions for developing and implementing a global privacy notice. The group met in March 2004 and prepared a memorandum that emphasized that effective privacy notices should be multi-layered, with all layers using plain language. In addition, a short notice should contain no more information than individuals can reasonably process. Studies on readability have shown that a maximum of seven categories should be used, with limited information in each category.

Research on privacy policies conducted in the U.S. has provided persuasive evidence that a layered approach, with an emphasis on simple and clear short notices, is the most effective way of building consumer trust. For example, the Hunton & Williams Center for Information Policy Leadership, which has done pioneering work on short notices, has conducted focus group tests on privacy policies. It found that consumer trust in companies is eroded by long, legalistic privacy policies. Focus group participants preferred short privacy notices that clearly communicated how a company was using and sharing their personal information, and expressed support for a common "template" that could be used by different companies.

In Ontario, the IPC has taken a leadership role in promoting the use of short notices in the health sector. The *Personal Health Information Protection Act* (*PHIPA*), which came into effect November 1, 2004, sets out rules for the collection, use and disclosure of personal health information. These rules apply to all health information custodians operating within the province of Ontario and to individuals and organizations that receive personal health information from health information custodians. *PHIPA* requires custodians to take reasonable steps to inform the public about their information practices and how individuals may exercise their rights.

The IPC is the oversight body for *PHIPA*, and Commissioner Ann Cavoukian has made it clear that the notices prepared by health professionals must serve as effective communication tools – they must provide useful and understandable information to patients.

Consequently, a short notices working group was established in the fall of 2004 in order to develop notices under *PHIPA*. This is a joint project of the IPC and the Ontario Bar Association, with representatives from the IPC, the Ontario Bar Association's Privacy Law and Health Law sections, the Ministry of Health and Long-Term Care, Management Board Secretariat, and the Ontario Dental Association. This project is very much part of the international effort to develop and promote the use of short notices and, to the best of our knowledge, is one of only two projects around the world focusing on short notices in the health sector.

In line with the 2004 memorandum, the *PHIPA* short notices working group has adopted a "layered" approach, with an emphasis on developing separate short notices for each of the following health care groups: primary care providers, hospitals and facilities, and long-term care facilities. These simple templates will have a consistent layout and format and contain necessary

but understandable information about the collection, use and disclosure of personal health information.

The group is also developing additional layers of information to supplement the information in the short notices, which will include easy-to-read brochures and other publications. The goal is to develop easily readable material containing the necessary elements, but not so much information that patients and others will give up or be unable to read them. The language of the notices must be understandable by all. Simplicity is the key.

FREEDOM OF INFORMATION PRO BONO PROJECT

The IPC, as the independent oversight agency responsible for resolving access appeals under Ontario's *Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act* (the *Acts*), has jurisdiction to hear an appeal if the record or records involved are covered by the *Acts*, and to issue an order resolving the appeal.

In the vast majority of cases, an appeal ends when the IPC has successfully mediated a resolution or has issued an order. IPC decisions are not subject to appeal on the basis that a party disagrees with the outcome. IPC decisions in access appeals can only be challenged on limited grounds using a special type of court proceeding called "judicial review." There are three basic grounds for judicial review: (1) the IPC had no "jurisdiction" to decide the matter; (2) the IPC's process was not "fair;" or (3) the IPC's decision was "unreasonable" or "irrational."

In November 2004, Pro Bono Law Ontario (PBLO) launched a pilot project aimed at helping eligible unrepresented individuals with judicial review applications arising under the two *Acts*.

The project had its genesis within the IPC's Tribunal Services Department. Over the years, it had become evident to the department that individual requesters often lack legal representation and are therefore unable to fully participate in court proceedings arising out of IPC decisions. Comments from lawyers outside the IPC suggested that there might be some interest amongst the legal profession in providing services to needy litigants in this area of the law.

The IPC was aware that PBLO (funded through The Trillium Foundation, Canadian Heritage, Legal Aid Ontario, The Law Foundation and the Law Society of Upper Canada) was active in organizing groups, law firms and law associations to address the legal needs of low-income and disadvantaged individuals. The IPC approached the PBLO to determine whether it would be interested in spearheading a pro bono program in the area of freedom of information law, and we were delighted when PBLO's executive director immediately expressed enthusiasm for the idea.

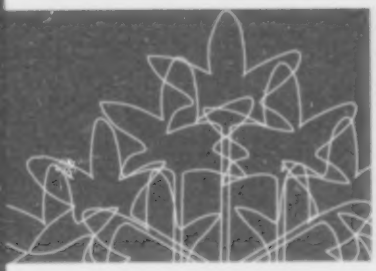
The IPC's Tribunal Services Department worked with PBLO to establish the principles of such a pro bono program. Amongst other things, it was decided that a workable program would focus on court proceedings that arise out of IPC decisions. Representatives of Tribunal Services met with PBLO representatives, the Ministry of the Attorney General and a participating law firm to review the basic principles. The IPC also assisted in recruiting a retired member of the legal profession who was willing to act as a volunteer co-ordinator for the program.

PBLO obtained the commitment of three law firms willing to provide pro bono legal services through this program. The FOI Pro Bono Program turned out to be an appealing one for private sector firms. The legal profession has turned its attention in recent years to the challenge of meeting the needs of disadvantaged groups and individuals, though the provision of pro bono legal services. Participation in the FOI Pro Bono Program provides a means for some law firms to help in achieving greater access to justice, through interesting, appellate-level work, combining elements of public policy and established legal analysis. The result was an encouraging level of interest amongst private sector firms in donating their time to this program.

The participating law firms identified their associates who would provide the legal services, and designated pro bono partners to accept and place referrals and supervise the program within their firms. Following this, the IPC participated (along with representatives of the Ministry of the Attorney General and the private bar) in an educational session introducing the participating lawyers to the program, and providing training on the essentials of freedom of information law. A major focus of the educational session was the judicial review of IPC decisions and, in particular, distinctive procedural and substantive aspects of these judicial review proceedings.

The program was launched as a one-year pilot project, with the participation of the three law firms. PBLO has produced a brochure for distribution by the IPC on a case-by-case basis (modeled after current practice under The Advocates' Society Court of Appeal Program). As indicated, the basic aim of the program is to provide legal representation to needy individuals who are affected by judicial review applications from an order of the IPC. In order to qualify for the program, individuals must demonstrate financial eligibility, and that their case has some reasonable prospect of success. The program is not intended to provide free legal services to replace those already engaged by a litigant.

It is anticipated that the program will contribute to the general goal of increasing access to justice, with the additional benefit of providing for a fuller airing of issues of FOI law before the courts, through more effective participation by all interested parties.

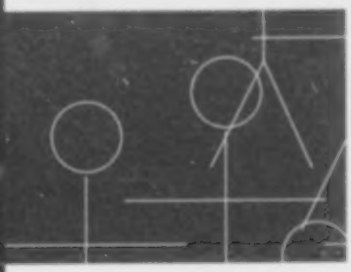


COMMISSIONER'S RECOMMENDATIONS

One of the preceding sections, *Access and Privacy Blueprint for Action: A Progress Report*, includes a review of what the government has done in response to the recommendations I made in last year's annual report, as well as a series of recommendations I am making based on government action to date.

Here, I address the need for three over-arching steps the government should take that would significantly enhance freedom of information and protection of privacy in Ontario:

- Each year, my office has to tell Ontarians, again and again: "We're sorry, but the situation you describe doesn't fall under Ontario privacy legislation." Residents of several other Canadian provinces have more effective privacy protection than Ontarians. Ontario needs a made-in-Ontario privacy law that will cover all of the private sector and non-government sectors, similar to laws in several other Canadian provinces. The Ontario government should model a provincial privacy bill after the comparable private sector privacy laws enacted in Alberta and British Columbia.
- Institutions that are primarily funded by government dollars should be covered by *Freedom of Information and Protection of Privacy* legislation for the purposes of transparency and accountability. Universities, hospitals and Children's Aid Societies are leading examples of the types of institutions that need to be brought under this legislation. I recommend that the government launch an immediate review to compile a list of institutions that are primarily funded by government but are not yet covered by the *Acts*. Part two of this project should be a short review of which of these institutions will be placed under the *Acts* – with the default position being that each institution on the list will be added, unless there are very unique and compelling reasons not to add a specific institution.
- In my *Special Report to the Legislative Assembly of Ontario on the Disclosure of Personal Information by the Shared Services Bureau, Management Board Secretariat, and the Ministry of Finance*, which I tabled on December 16, I cited the need for trial runs and testing by the Shared Services Bureau (SSB). While the SSB is now doing this, we have had another privacy breach at another ministry where testing was inadequate. In this case, problems arose with the use of new online forms when they were not properly tested before being posted live. I recommend that the government move quickly to advise all ministries and agencies that independent testing **must** be done on all new systems prior to their implementation.



REQUESTS BY THE PUBLIC

Provincial and municipal government organizations are required under the *Acts* to submit a report to the IPC on the number of requests for information or correction to personal information they received in the prior calendar year, as well as such other pertinent information as timeliness of responses, outcomes and fees collected.

In 2004 – for the third straight year – the number of freedom of information requests filed across Ontario set a record. There were 33,557 requests filed with provincial and municipal government organizations, an 11.4 per cent increase from 2003, when 30,110 were received. This is the sixth straight year that the number of requests has increased.

Provincial organizations received 13.5 per cent more requests in 2004 (16,763, up from 14,774 in 2003). Of these, 5,801 (34.6 per cent) were for personal information and 10,962 (65.4 per cent) were for general records.

Municipal government organizations received 9.5 per cent more requests in 2004 (16,794, compared to 15,336 in 2003). Of these, 6,547 (38.9 per cent) were personal information requests and 10,257 (61.1 per cent) were for general records.

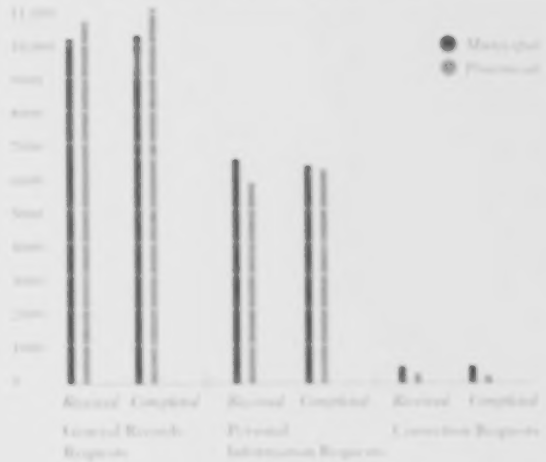
The Ministry of Health and Long-Term Care received the largest number of requests under the provincial *Act* (5,199), followed by the ministries of Environment (4,817), Community Safety and Correctional Services (2,823), and Labour (1,021). Together, these four ministries received 82.7 per cent of all provincial requests.

Once again, Police Services Boards received the most requests under the municipal *Act* – 54.6 per cent of all requests. Municipal corporations were next with 41.7 per cent, followed by health boards at 1.7 per cent and school boards with 1.1 per cent.

Provincial organizations responded to 68.7 per cent of requests within 30 days in 2004, a decline of 8.5 per cent. (The 2004 percentage for provincial organizations where a minister is the head was 67.4.) Overall, 88.6 per cent of provincial requests were answered within 60 days (a decline of three per cent from 2003). Requests that took more than 120 days to complete increased to 3.1 per cent from three per cent in 2003.

Municipal government organizations responded to 75.7 per cent of requests within 30 days. Overall, 86.4 per cent of municipal requests were responded to within 60 days. Requests that required more than 120 days to complete increased to 6.9 per cent in 2004 from six per cent in 2003.

Requests Received and Completed – 2004



(For a more detailed discussion of compliance rates, see the chapter entitled *Response Rate Compliance*, which follows this chapter.)

The majority of provincial requests in 2004 (80.9 per cent) were made by businesses, while the majority of municipal requests (62.8 per cent) came from individuals.

The *Acts* contain a number of exemptions that allow, and in some situations actually require, government organizations to refuse to disclose requested information. In 2004, the most frequently cited exemption for personal information requests was the protection of other individuals' privacy (sections 49/38, in the provincial/municipal *Acts*). Privacy protection (sections 21/14) was also the most used exemption for general records requests.

The *Acts* give individuals the right to request correction of their personal information held by government organizations. In 2004, provincial organizations received five requests for corrections

and refused one. Municipal organizations received 67 correction requests and refused six. When a correction is refused, the requester can attach a statement of disagreement to the record, outlining why the information is believed to be incorrect. In 2004, there were five statements of disagreement filed with municipal organizations, one with a provincial organization.

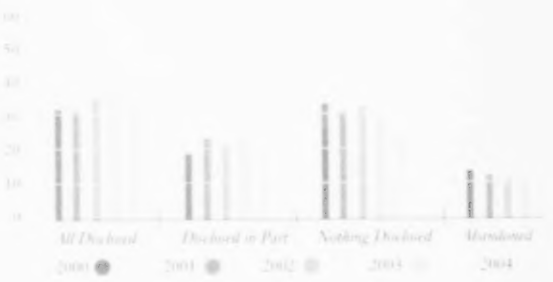
The legislation contains a number of fee provisions. In addition to application fees, which are mandatory, government organizations can charge certain other prescribed fees for responding to requests. Where the anticipated charge is more than $25, a fee estimate can be given to a requester before search activity begins. Organizations have discretion to waive fees where it seems fair and equitable to do so after weighing several specific factors listed in the Act.

Provincial organizations reported collecting $81,728.50 in application fees and $491,808.10 in additional fees in 2004. The corresponding numbers for municipal organizations were $81,459.45 and $149,169.02.

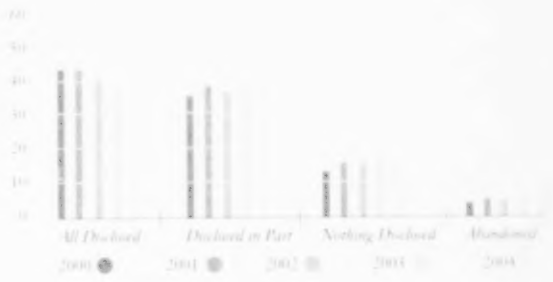
Search fees were the most commonly charged category by provincial organizations (46.5 per cent), followed by reproduction costs (24.6 per cent) and shipping charges (18.1 per cent). Municipal organizations, in contrast, most frequently charged for reproduction costs (40.1 per cent), followed by search fees (28.2 per cent) and preparation costs (19.8 per cent).

(Percentage may not equal 100 due to rounding.)

Outcome of Provincial Requests – 2004 (%)



Outcome of Municipal Requests – 2004 (%)



Municipal Exemptions Used
Personal Information – 2004

Municipal Exemptions Used
General Records – 2004

Provincial Exemptions Used
Personal Information – 2004

Provincial Exemptions Used
General Records – 2004

Cases in Which Fees Were Estimated – 2004

	84.0%	4761	93.8%	2168
	12.7%	718	5.7%	149
	3.4%	190	57.4%	3126
		$81,728.50		$81,459.45
		$90,808.10		$149,169.02
		$13,126.44		$9,024.47

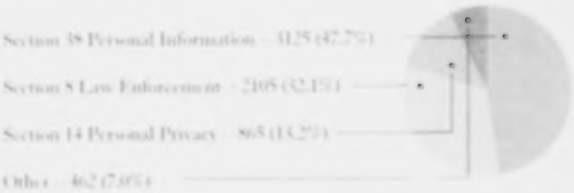
Average Cost of Provincial Requests for 2004

Personal Information	$7.20
General Records	$43.97

Average Cost of Municipal Requests for 2004

Personal Information	$8.65
General Records	$17.93

Municipal Exemptions Used
Personal Information - 2004


Section 38 Personal Information – 3125 (42.7%)
Section 8 Law Enforcement – 2305 (32.1%)
Section 14 Personal Privacy – 865 (13.2%)
Other – 462 (7.0%)

Municipal Exemptions Used
General Records - 2004

Provincial Exemptions Used
Personal Information - 2004

Section 49 Personal Information – 2797 (51.2%)
Section 14 Law Enforcement – 1911 (36.9%)
Section 19 Solicitor-Client Privilege – 223 (4.2%)
Other – 480 (6.3%)

Provincial Exemptions Used
General Records - 2004

Cases in Which Fees Were Estimated – 2004

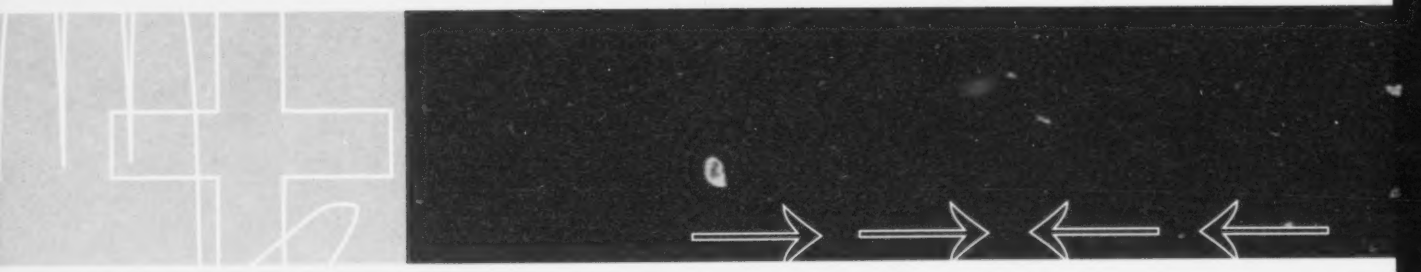
	Provincial		*Municipal*	
Collected in Full	84.0%	4761	39.8%	2168
Waived in Part	12.7%	718	2.73%	149
Waived in Full	3.4%	190	57.4%	3126
Total Application Fees Collected (dollars)		$81,728.50		$81,459.45
Total Additional Fees Collected (dollars)		$391,808.10		$149,169.02
Total Fees Waived (dollars)		$13,126.43		$9,024.47

Average Cost of Provincial Requests for 2004

Personal Information	$7.29
General Records	$43.97

Average Cost of Municipal Requests for 2004

Personal Information	$8.65
General Records	$17.93



RESPONSE RATE COMPLIANCE

To help focus attention on the importance of complying with the response requirements of the *Acts*, the IPC reports compliance rates for each ministry and selected other government organizations.

In keeping with a practice introduced in the 2002 annual report, the IPC is reporting individual compliance rates via two sets of charts. First, as we have done for five years, the compliance rate for each institution is set out in terms of meeting the 30-day response standard set by the *Acts*. A second chart reports on the compliance rate when Notices of Extension (section 27(1) of the provincial *Act*; section 20(1) of the municipal *Act*) and Notices to Affected Person (section 28(1) and section 21(1) respectively) are included in the compliance calculations. The legitimate issuance of either Notice means that a government organization can be in compliance with the *Act*, despite the fact that it takes more than 30 days to respond to a request.

Provincial Organizations

It is encouraging to note that 2004 saw an unprecedented number of provincial ministries – 19 – with compliance rates exceeding 85 per cent (including Notices).

In fact, 15 ministries achieved more than 90 per cent compliance, when Notices are factored in.

Overall, however, provincial ministries had a compliance rate of 68.7 per cent, a decrease from 77.2 per cent in 2003 – the first time in six years that the provincial compliance rate has not increased. When the issuance of Notices is considered, the compliance rate climbs to 72.3 per cent, still down eight per cent from the comparable number the previous year. The decline in overall compliance is attributable to the Ministry of Health and Long-Term Care. If this ministry's compliance rate (40.6 per cent) is removed from the calculation, the overall provincial compliance rate improves dramatically to 88.9 per cent.

Of those ministries dealing with a large volume of requests, the IPC notes the achievements of the ministries of Labour and Natural Resources in attaining compliance rates of more than 85 per cent, including Notices. The ministries of the Attorney General, Community and Social Services, Community Safety and Correctional Services, Consumer and Business Services, Finance and Transportation met compliance timeframes more than 90 per cent of the time, when the issuance of Notices is considered. This is a remarkable achievement and these ministries are to be commended.

The IPC is particularly pleased to see that the long-term efforts to improve compliance by the ministries of Natural Resources and Community Safety and Correctional Services have yielded excellent results, with Community Safety and Correctional Services achieving an outstanding compliance rate of 97.6 per cent, when the issuance of Notices is considered. The IPC also acknowledges the continued improvement in the Ministry of the Environment's compliance rate –81.6 per cent in 2004, up five per cent from 2003.

However, the IPC notes with concern the Ministry of Health and Long-Term Care's 2004 compliance rate of 40.6 per cent, down from 75.0 per cent in 2003. The ministry explained that in 2004, it experienced a dramatic increase in the volume of requests. The ministry put in place improvement strategies to address the unprecedented request volume, which helped to improve compliance rates in the latter months of the year. The IPC will actively monitor the situation to determine if these strategies are a long-term solution.

Provincial: Number of Requests Completed in 2004 *(includes only Boards, Agencies and Commissions where the Minister is the Head)*

Ministry	*Requests Received*	*Requests Completed*	*Within 1-30 days No. of Requests*	*%*	*Within 31-60 days No. of Requests*	*%*	*Within 61-90 days No. of Requests*	*%*	*More than 90 days No. of Requests*	*%*
Agriculture & Food	32	34	30	88.2	3	8.8	1	3.0	0	0.0
Attorney General/ONAS/DRS	374	350	305	87.1	22	6.3	13	3.7	10	2.9
Cabinet Office	33	28	25	89.3	2	7.1	0	0.0	1	3.6
Children & Youth Services	34	33	25	75.8	5	15.2	2	6.0	1	3.0
Citizenship & Immigration/OSS/OWD	8	5	1	20.0	3	60.0	1	20.0	0	0.0
Community Safety & Correctional Services	2823	2770	2285	82.5	375	13.5	66	2.4	44	1.6
Community & Social Services	355	342	283	82.7	46	13.5	10	2.9	3	0.9
Consumer & Business Services	270	267	265	99.3	2	0.7	0	0.0	0	0.0
Culture	12	13	5	38.5	7	53.8	1	7.7	0	0.0
Economic Development & Trade	17	14	12	85.8	1	7.1	1	7.1	0	0.0
Education	34	34	29	85.3	4	11.8	0	0.0	1	2.9
Energy	21	25	16	64.0	5	20.0	1	4.0	3	12.0
Environment	4814	4936	4026	81.6	371	7.5	193	3.9	346	7.0
Finance	166	143	124	86.7	17	11.9	1	0.7	1	0.7
Francophone Affairs	4	4	3	75.0	1	25.0	0	0.0	0	0.0
Health and Long-Term Care	5195	6047	2456	40.6	2379	39.3	796	13.2	416	6.9
Intergovernmental Affairs	2	2	2	100.0	0	0.0	0	0.0	0	0.0
Labour	900	897	798	89.0	62	6.9	22	2.4	15	1.7
Management Board Secretariat	18	12	11	91.7	1	8.3	0	0.0	0	0.0
Municipal Affairs	45	42	34	81.0	8	19.0	0	0.0	0	0.0
Natural Resources	120	121	70	57.9	36	29.7	10	8.3	5	4.1
Northern Development and Mines	4	5	4	80.0	0	0.0	1	20.0	0	0.0
Public Infrastructure Renewal	8	6	4	66.7	2	33.3	0	0.0	0	0.0
Tourism and Recreation	12	7	5	71.4	0	0.0	2	28.6	0	0.0
Training, Colleges and Universities	49	53	37	69.8	7	13.2	6	11.3	3	5.7
Transportation	243	222	216	97.3	6	2.7	0	0.0	0	100.0

Provincial *Compliance including Notice of Extension and Notice to Third Parties (excludes Boards, Agencies and Commissions where the Minister is the Head)*

Ministry	*30 day compliance* [1]	*Compliance including s. 27(1) / 28(1)* [2]
Agriculture & Food	88.2	91.2
Attorney General/ONAS/ DRS	87.1	96.3
Cabinet Office	89.3	92.9
Children & Youth Services	75.8	81.8
Citizenship & Immigration/OSS/OWD	20.0	80.0
Community Safety & Correctional Services	82.5	97.6
Community & Social Services	82.7	92.1
Consumer & Business Services	99.3	99.6
Culture	38.5	92.3
Economic Development & Trade	85.8	92.9
Education	85.3	88.2
Energy	64.0	64.0
Environment	81.6	81.6
Finance	86.7	93.7
Francophone Affairs	75.0	75.0
Health & Long-Term Care	40.6	40.6
Inter-governmental Affairs	100.0	100.0
Labour	89.0	89.0
Management Board Secretariat	91.7	100.0
Municipal Affairs	81.0	81.0
Natural Resources	57.9	86.0
Northern Development & Mines	80.0	100.0
Public Infrastructure Renewal	66.7	100.0
Tourism & Recreation	71.4	85.7
Training, Colleges & Universities	69.8	94.3
Transportation	97.3	99.1

Provincial – Number of Requests Completed in 2004

Municipal Organizations

Overall, municipal government organizations responded to 77.6 per cent of requests within the required timeframe. This is a very encouraging three per cent increase from 2003 and reverses the four-year downward trend in municipal compliance reported last year. One institution, Toronto Police Services, had a significant negative impact in the compliance rate. If its number is removed, the overall compliance rate for municipal institutions reaches 85.1 per cent.

MUNICIPALITIES

In the accompanying charts, the individual response rates from the municipalities that received the most requests (in each of three population categories) are cited. Also cited are the police services and health boards that received the most requests.

Overall, municipal corporations had a 30-day compliance rate of 79.7 per cent, a significant improvement from 66.1 per cent in 2003. The City of Hamilton continues to improve its compliance rate, which has reached an outstanding 94.5 per cent, up from 92.8 per cent last year. The cities of Mississauga and Ottawa as well as the Regional Municipality of York continued to achieve high levels of compliance.

The City of Toronto's 30-day response rate is 65.1 per cent, up from 58.7 per cent in 2003. Including Notices, Toronto's 2004 response rate is 66.2 per cent. During the year, the City of Toronto undertook a number of initiatives aimed at improving compliance. In a memorandum issued in August 2004, Mayor David Miller identified the effective administration of the municipal *Act* as part of a commitment to transparency, accountability and public accessibility as core values for the renewal and improvement of the city's public services. In addition, the city initiated a Corporate Access and Privacy (CAP) Renewal project to identify ways to better address access and privacy responsibilities. With respect to processing access requests, the request backlog was significantly reduced, and efforts to expedite record retrieval were implemented. In fact, if backlogged requests are removed from the equation, the city's compliance rate for requests received in 2004 is 75 per cent. Recently, the acquisition of a new access request tracking system was approved. The CAP renewal project continues to address training needs, resources and accountability challenges.

The 2004 compliance rates for those municipalities in the population-under-50,000 category that received the most requests are generally impressive. The towns of Georgina and Parry Sound are to be commended for their 100 per cent compliance with the 30-day standard.

All of the municipalities that received the most requests in the third population category (50,000 to 200,000) had excellent 2004 compliance rates. The City of Thunder Bay maintained its 100 per cent compliance rate and is joined this year by the City of Vaughan. The City of Kitchener and Town of Oakville also achieved 100 per cent compliance, when the issuance of Notices is considered.

We highly commend all of the municipalities noted above who were able to achieve outstanding results.

POLICE SERVICES

In 2004, police services achieved an overall 30-day compliance rate of 71.6 per cent, down from 77.3 per cent in 2003. However, when Toronto Police Services is excluded, the overall compliance rate for police services is 87.1 per cent.

Once again, we commend the Halton Regional Police Services for maintaining its 100 per cent compliance rate. When section 20 and 21 Notices are taken into account, the compliance rate of the Niagara Regional Police Service is an impressive 98.5 per cent. Special recognition should also be given to the Hamilton Police Service for achieving a 92.5 per cent compliance rate this year, an impressive climb from 75.6 per cent, including Notices, in 2003.

However, we note a significant decline in the Durham Regional Police Service's compliance rate, which was 51.5 per cent in 2004, down from 80.5 per cent in 2003, when the issuance of Notices is considered. Durham Regional Police Service, which had a 20 per cent increase in requests in 2004, advises that it is taking the decline in its compliance rate seriously and is reviewing staffing levels to meet increasing demands.

The Toronto Police Service compliance rate continues to be substandard. In 2004, only 32 per cent of requests filed with that police service were responded to within 30 days, down from 32.5 per cent in 2003. When section 20 and 21 Notices are factored in, the compliance rate for 2004 reached 34.8 per cent, down from 35.6 percent in 2003. The loss of experienced staff, including the co-ordinator, was cited as a contributing factor.

The Commissioner met with the then-head of the Toronto Police Services Board last year. The Toronto Police Service advises that initiatives have been undertaken to improve compliance, including an internal audit to review practices and operational policies, improvements to the tracking system as well as measures to enhance prompt record retrieval and reduce the request backlog.

HEALTH BOARDS

This is the second year that we are reporting on the compliance rates of local health boards. Compared to municipal corporations and police services boards, these institutions receive a modest number of access requests – but more than boards of education, which was the other municipal category we previously reported on.

In responding to these requests, the collective effort of health boards continues to yield impressive results. We commend all the health boards listed in our statistical report, especially the Brant County Health Unit, the North Bay & District Health Unit and the Windsor-Essex County Health Unit for their 100 per cent compliance.

Top Five Municipal Corporations *(population under 50,000) based on numbers of requests completed*

	Requests Received	Requests Completed	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
Town of Caledon (49,740)	26	28	27	96.4	1	3.6	0	0.0	0	0.0
City of Cornwall (42,623)	15	18	9	50.0	3	16.7	0	0.0	6	33.3
Town of Georgina (36,597)	37	37	37	100.0	0	0.0	0	0.0	0	0.0
Corporation of Haldimand (41,072)	25	24	15	62.5	7	29.2	2	8.3	0	0.0
Town of Parry Sound (5,357)	28	28	28	100.0	0	0.0	0	0.0	0	0.0

Top Five Municipal Corporations *(population between 50,000 and 200,000) based on numbers of requests completed*

	Requests Received	Requests Completed	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
City of Kitchener (178,178)	321	321	320	99.7	1	0.3	0	0.0	0	0.0
Town of Oakville (144,128)	276	275	270	98.2	5	1.8	0	0.0	0	0.0
Town of Richmond Hill (124,740)	395	398	389	97.7	8	2.0	1	0.3	0	0.0
City of Thunder Bay (102,617)	89	88	88	100.0	0	0.0	0	0.0	0	0.0
City of Vaughan (186,035)	91	94	94	100.0	0	0.0	0	0.0	0	0.0

Top Five Municipal Corporations *(population over 200,000) based on numbers of requests completed*

	Requests Received	Requests Completed	Within 1-30 days No. of Requests	%	Within 31-60 days No. of Requests	%	Within 61-90 days No. of Requests	%	More than 90 days No. of Requests	%
City of Hamilton (469,987)	187	182	172	94.5	9	4.9	0	0.0	1	0.6
City of Mississauga (570,988)	411	415	410	98.8	4	1.0	1	0.2	0	0.0
City of Ottawa (741,105)	372	353	318	90.1	29	8.3	3	0.8	3	0.8
City of Toronto (2,125,394)	3,346	3,629	2,361	65.1	431	11.9	215	5.9	622	17.1
Municipality of York (707,790)	74	67	60	89.5	6	9.0	1	1.5	0	0.0

Top Five Municipal Corporations *Compliance including Notice of Extension and Notice to Third Parties (population under 50,000)*

based on number of requests completed

	30-day compliance (%)	Compliance including + 20(1) / 21(1) (%)
Town of Caledon	96.4	96.4
Town of Cornwall	50.0	50.0
Town of Georgina	100.0	100.0
Corporation of Haldimand	62.5	91.7
Town of Parry Sound	100.0	100.0

Top Five Municipal Corporations *Compliance including Notice of Extension and Notice to Third Parties (population between 50,000 and 100,000)*

based on number of requests completed

	30-day compliance (%)	Compliance including + 20(1) / 21(1) (%)
City of Kitchener	99.7	100.0
Town of Oakville	98.2	100.0
Town of Richmond Hill	97.7	97.7
City of Thunder Bay	100.0	100.0
City of Vaughan	100.0	100.0

Top Five Municipal Corporations *Compliance including Notice of Extension and Notice to Third Parties (population over 100,000)*

based on number of requests completed

	30-day compliance (%)	Compliance including + 20(1) / 21(1) (%)
City of Hamilton	94.5	96.7
City of Mississauga	98.8	99.8
City of Ottawa	90.1	96.3
City of Toronto	65.1	66.2
Municipality of York	89.5	94.0

Top Five Health Boards *ranked on number of requests completed*

	Requests Received	*Requests Completed*	*Within 1–30 days* No. of Requests	%	*Within 31–60 days* No. of Requests	%	*Within 61–90 days* No. of Requests	%	*More than 90 days* No. of Requests	%
Algoma Health Unit	25	25	20	80.0	5	20.0	0	0.0	0	0.0
Brant County Health Unit	96	96	96	100.0	0	0.0	0	0.0	0	0.0
Hastings & Prince Edward Counties Health Unit	15	15	11	73.3	2	13.3	1	6.7	1	6.7
North Bay & District Health Unit	85	85	85	100.0	0	0.0	0	0.0	0	0.0
Windsor-Essex County Health Unit	30	30	30	100.0	0	0.0	0	0.0	0	0.0

Top Five Police Institutions *ranked on number of requests completed*

	Requests Received	*Requests Completed*	*Within 1–30 days* No. of Requests	%	*Within 31–60 days* No. of Requests	%	*Within 61–90 days* No. of Requests	%	*More than 90 days* No. of Requests	%
Durham Regional Police Service	718	666	340	51.1	252	37.8	54	8.1	20	3.0
Halton Regional Police Service	713	715	715	100.0	0	0.0	0	0.0	0	0.0
Hamilton Police Service	1,153	1,200	1,110	92.5	67	5.6	14	1.2	9	0.7
Niagara Regional Police Service	724	719	634	88.2	83	11.5	2	0.3	0	0.0
Toronto Police Service	2,589	2,538	811	32.0	491	19.3	276	10.9	960	37.8

Top Five Health Boards *ranked on number of requests completed*

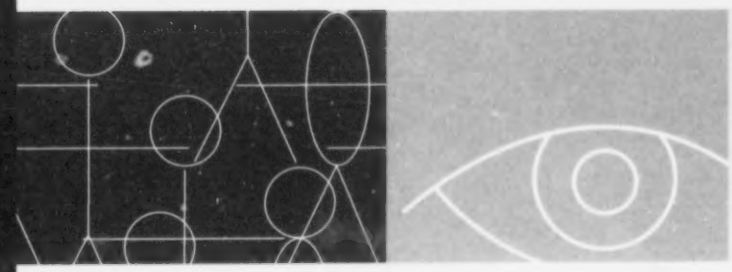
Compliance including Notice of Extension and Notice to Third Parties

	30 day compliance %	*Compliance including s. 20(1) / 21(1) %*
Algoma Health Unit	80.0	80.0
Bruce County Health Unit	100.0	100.
Hastings & Prince Edward Counties Health Unit	73.3	80.0
North Bay & District Health Unit	100.0	100.0
Windsor-Essex County Health Unit	100.0	100.0

Top Five Police Institutions *ranked on number of requests completed*

Compliance including Notice of Extension and Notice to Third Parties

	30 day compliance %	*Compliance including s. 20(1) / 21(1) %*
Durham Regional Police Service	51.1	51.7
Halton Regional Police Service	100.0	100.0
Hamilton Police Service	92.5	92.5
Niagara Regional Police Service	88.2	98.5
Toronto Police Service	32.0	34.8



ACCESS

The concept that most government-held information is accessible to anyone who wants to see it is one of the fundamental principles of accountable government and participatory democracy. This principle is reflected in the provincial and municipal *Acts*, which provide that, subject to limited and specific exemptions, information under the control of government organizations should be available to the public.

If you make a request under one of the *Acts* to a provincial or municipal government organization and are not satisfied with the response, you can appeal the decision to the IPC. Records that do not contain the personal information of the requester are referred to as "general records." *General records appeals* can be filed concerning a refusal to provide access to general records, the amount of fees charged, the fact that the organization did not respond within the prescribed 30-day period, or other procedural aspects relating to a request. (Appeals relating to requests for access to one's own personal information are covered in this annual report in the chapter entitled *Privacy*.)

When an appeal is received, the IPC first attempts to settle it informally. If all issues cannot be resolved within a reasonable period of time, the IPC may conduct an inquiry and issue a binding order, which could include ordering the government organization to release all or part of the requested information.

STATISTICAL OVERVIEW

In 2004, 827 appeals regarding access to general records and personal information were made to the IPC, a decrease of 13 per cent from 2003. The overall number of appeals closed in 2004 was 903, a decrease of seven per cent compared to 2003.

Access to General Records

APPEALS OPENED

Overall, 502 appeals regarding access to general records were made to the IPC in 2004. Of these, 253 were filed under the provincial *Act* and 249 under the municipal *Act*. *(Percentage figures are rounded off in this report and may not add up exactly to 100.)*

Of the 253 *provincial* general records appeals received, 199 involved ministries and 54 involved agencies. The Ministry of Community Safety and Correctional Services was involved in the largest number of general records appeals (39), followed by the Ministry of Health and Long-Term Care (33), and the ministries of Natural Resources (22), the Attorney General (12), Transportation (eight) and Consumer and Business Services (eight). The agencies with the highest number of general records appeals included the Ontario Lottery and Gaming Corporation (eight), Hydro One (seven), the Archives of Ontario (seven), Ontario Realty Corporation (six) and the Office of Public Guardian and Trustee (six).

Of the 249 *municipal* general records appeals received, 146 (59 per cent) involved municipalities, 60 (24 per cent) involved the police, and 18 (seven per cent) involved boards of education. An additional 25 (10 per cent) appeals involved other types of municipal institutions.

In terms of the issues raised, 54 per cent of general appeals were related to the exemptions claimed by institutions in refusing to grant access. An additional seven per cent concerned exemptions, plus other issues. Ten per cent of appeals were the result of "deemed refusals" to provide access, in which the institution did not respond to the request within the timeframe required by the *Acts*. In about eight per cent of appeals, the issue was whether the institution had conducted a reasonable search for the records requested, while another five per cent were third party appeals. The remaining appeals related to fees, time extensions and other issues.

Provincial institutions with the largest number of deemed refusal appeals included the ministries of Environment (eight) and Health and Long-Term Care (six). Municipal institutions with the largest number of deemed refusal appeals included the City of Toronto (12), the Town of Oakville (three) and the Toronto Police Services Board (three).

Most appellants were individual members of the public (52 per cent). A substantial portion of appellants came from the business community (27 per cent). (A company appealing a denial of access to a competitor's bid for a government contract would be categorized as a business appellant.) Other appellants included the media (nine per cent), associations (seven per cent) and government (three per cent). (If a municipality appealed a decision of a provincial government institution, the municipality would be categorized as a "government" appellant.)

Lawyers (71) and agents (18) represented appellants in 18 per cent of general records appeals made in 2004.

In 2004, $9,170 in application fees for general record appeals was paid to the IPC.

APPEALS CLOSED

The IPC closed 562 general records appeals during 2004. Of these, 278 (49.5 per cent) concerned provincial institutions and 284 (50.5 per cent) concerned municipal institutions.

Sixty-seven per cent of general records appeals were closed without the issuance of a formal order. Of these, five per cent were screened out, 56 per cent were mediated in full, 33 per cent were withdrawn, four per cent abandoned, and one per cent dismissed without an inquiry. Of the 211 general records appeals that were not mediated in full and went on to adjudication, 114 appeals (54 per cent) were mediated in part during the mediation stage.

The proportion of appeals that were screened out, mediated in full or withdrawn was roughly equivalent over both the municipal and provincial sectors. Of the 562 general records appeals closed in 2004, 22 per cent were closed during the intake stage, 40 per cent during the mediation stage, and 38 per cent during the adjudication stage.

- Of the appeals closed during the *intake* stage, 71 per cent were withdrawn, 16 per cent were screened out, seven per cent abandoned, six per cent closed by issuing a formal order, and one per cent mediated in full.
- Of the appeals closed during the *mediation* stage, 92 per cent were mediated in full, four per cent were closed by issuing a formal order, four per cent were withdrawn, and one per cent abandoned.
- Of the appeals closed during the *adjudication* stage, 82 per cent were closed by issuing a formal order, 13 per cent were withdrawn, two per cent were abandoned, one per cent were mediated in full and one per cent were dismissed without an inquiry.

In 2004, 33 per cent of general records appeals were closed by issuing an order. The IPC issued a total of 185 final orders pertaining to general records – 84 provincial and 101 municipal orders[1]. In addition, the IPC issued 13 interim orders – four provincial and nine municipal.

In the general records appeals resolved by order, the decision of the head was upheld in 32 per cent and partly upheld in 34 per cent of cases. The head's decision was not upheld in just under 25 per cent of the appeals closed by order. Ten per cent of the orders issued in 2004 had other outcomes. In comparing the outcome of provincial and municipal orders, it is notable that the decision of the head is slightly more likely to be upheld or partly upheld in provincial orders.

1 The number of appeals closed by order exceeds the number of orders, since one order may close more than one appeal.

2 Overall, the IPC issued a total of 279 final orders – 185 pertaining to access to general records and 94 pertaining to access to personal information. Also, the IPC issued 17 interim orders – 13 pertaining to access to general records and four pertaining to access to personal information.

Issues in General Records Appeals

	Provincial	%	*Municipal*	%	*Total*	%
Exemptions	138	54.5	132	53.0	270	53.7
Exemptions with other issues	18	7.1	19	7.7	37	7.4
Deemed refusal	24	9.5	28	11.3	52	10.3
Reasonable search	20	7.9	18	7.2	38	7.6
Interim decision	12	4.8	5	2.0	17	3.4
Third party	14	5.5	10	4.0	24	4.8
Fees	7	2.8	5	2.0	12	2.4
Time extension	1	0.4	5	2.0	6	1.2
Frivolous/vexatious request	0	0	5	2.0	5	1.0
Transfer	0	0	2	0.8	2	0.4
Failure to disclose	0	0	1	0.4	1	0.2
Inadequate decision	1	0.4	2	0.8	3	0.6
Other	18	7.1	17	6.8	35	7.0
Total	253	100	249	100	502	100

Types of Appellants

	Provincial	%	*Municipal*	%	*Total*	%
Academic/Researcher	1	0.4	2	0.8	3	0.6
Business	78	30.8	58	23.3	136	27.1
Government	8	3.2	5	2.0	13	2.6
Individual	107	42.3	153	61.4	260	51.8
Media	30	11.9	14	5.7	44	8.8
Association/Group	21	8.3	15	6.0	36	7.2
Politician	2	0.8	1	0.4	3	0.6
Union	6	2.3	1	0.4	7	1.3
Total	253	100	249	100	502	100

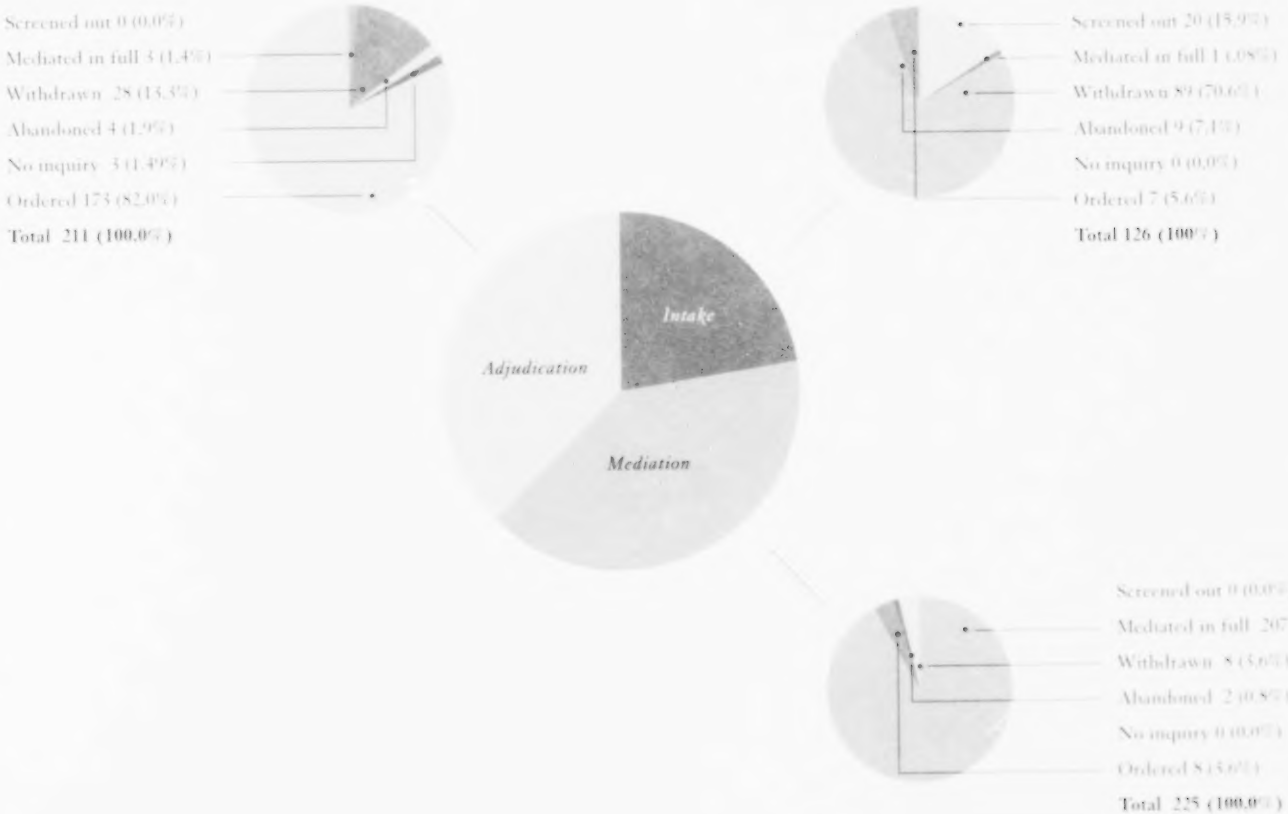
Outcome of Appeals Closed Other Than by Order

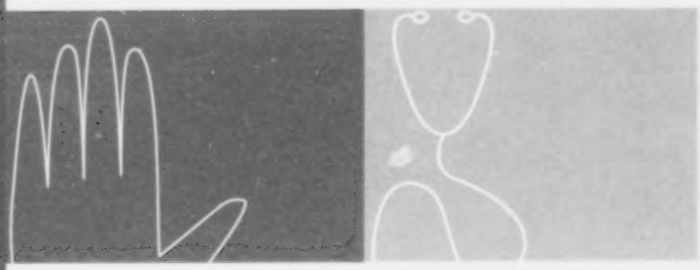
	Provincial	%	*Municipal*	%	*Total*	%
Screened out	11	5.7	9	5.0	20	5.4
Mediated in full	108	56.0	103	57.0	211	56.4
Withdrawn	65	33.7	60	33.1	125	33.4
Abandoned	7	3.6	8	4.4	15	4.0
No inquiry	2	1.0	1	0.5	3	0.8
Total	193	100	181	100	374	100

Outcome of Appeals Closed by Order

Head's Decision	*Provincial*	%	*Municipal*	%	*Total*	%
Upheld	29	34.1	32	31.1	61	32.4
Partly upheld	31	36.5	32	31.1	63	33.5
Not upheld	19	22.3	27	26.2	46	24.5
Other	6	7.1	12	11.6	18	9.6
Total	85	100	103	100	188	100

Outcome of Appeals by Stage Closed





PRIVACY

To help protect personal privacy, the provincial and municipal *Freedom of Information and Protection of Privacy Acts* establish rules that govern the collection, retention, use, disclosure, security, and disposal of personal information held by government organizations.

If you believe that a provincial or municipal government organization has failed to comply with one of the *Acts* and that your privacy has been compromised as a result, you can file a complaint with the IPC. In the majority of cases, the IPC attempts to mediate a solution. The IPC may make formal recommendations to a government organization to amend its practices.

STATISTICAL OVERVIEW

Overall, 128 privacy complaints were **opened** in 2004, compared to 104 in 2003, an increase of 23 per cent. There were 126 complaints **closed** in 2004, compared to 128 in 2003, a decrease of about two per cent. (Percentages in this report have been rounded off and may not add up exactly to 100.) Seventy-six (59 per cent) of the complaints opened in 2004 were filed under the provincial *Act* and 41 (32 per cent) were filed under the municipal *Act*. Eleven (nine per cent) non-jurisdictional complaints were opened. Of the 128 complaints opened in 2004, 92 (72 per cent) were initiated by individuals and 36 (28 per cent) were initiated by the Commissioner.

The complaints that were resolved in 2004 involved 133 **issues**. The disclosure of personal information was the most frequent issue, raised in 62 per cent of complaints. The collection of personal information was an issue in 22 per cent, security was an issue in five per cent, and the use of personal information was an issue in four per cent of complaints. The remainder involved other issues, including retention, disposal, access, notice of collection, and general privacy issues.

Eighty-two per cent of the issues raised in the privacy complaints were disposed of without the need for a finding. For the issues requiring a finding, institutions were found to have complied with the *Acts* in 50 per cent of complaints, to have complied in part in 21 per cent of complaints and not to have complied in 29 per cent.

While processing privacy complaints, the IPC continues to emphasize informal resolution. Consistent with this approach, 108 of the 126 privacy complaints closed in 2004 – 86 per cent – were closed without the issuance of a formal privacy complaint report. One hundred and one complaints (80 per cent) were closed during the intake stage. Of these, 22 per cent were screened out, two per cent were abandoned, 14 per cent were withdrawn, and 62 per cent were resolved informally. Twenty per cent of complaints proceeded to the investigation stage. Of the complaints closed during investigation, seven (28 per cent) were settled, and 18 (72 per cent) were closed by issuing a report. Eighteen privacy complaint reports were issued in 2004, containing a total of 36 recommendations to government organizations.

Of the 126 complaints closed in 2004, individual members of the public initiated 69 per cent and the Commissioner initiated 31 per cent.

Personal Information Appeals

The *Acts* also provide a right of access to, and correction of, your personal information. If you make a request under one of the *Acts* to a provincial or municipal government organization for your personal information, and you are not satisfied with the response, you can appeal the decision to the IPC. *Personal information appeals* can be filed concerning a refusal to provide access to your personal information, a refusal to correct your personal information, the amount of fees charged, the fact that the organization did not respond within the prescribed 30-day period, or other procedural aspects relating to a request. (Appeals relating to requests for access to general records are covered in the chapter entitled *Access*.)

When an appeal is received, the IPC first attempts to settle it informally. If all the issues cannot be resolved within a reasonable period of time, the IPC may conduct an inquiry and issue a

Summary of Privacy Complaints - 2004

	2003 Privacy Complaints				2004 Privacy Complaints			
	Provincial	*Municipal*	*Non-jurisdictional*	*Total*	*Provincial*	*Municipal*	*Non-jurisdictional*	*Total*
Opened	56	46	2	104	76	41	11	128
Closed	66	60	2	128	74	41	11	126

binding order, which could include ordering the government organization to release all or part of the requested information.

STATISTICAL OVERVIEW

In 2004, 827 appeals regarding access to general records and personal information were made to the IPC, a decrease of 13 per cent compared the number of appeals received in 2003. The overall number of appeals closed in 2004 was 803, a decrease of seven per cent from the previous year.

Access and Correction of Personal Information

APPEALS OPEN

Overall, 325 appeals regarding access or correction of personal information were made to the IPC in 2004. Of these, 135 (42 per cent) were filed under the provincial *Act* and 189 (58 per cent) were filed under the municipal *Act*. One non-jurisdictional personal information appeal was made in 2004.

Of the 135 provincial personal information appeals received, 113 (84 per cent) involved ministries and 22 (16 per cent) involved agencies. The Ministry of Community Safety and Correctional Services was involved in the largest number of personal information appeals (68), followed by the ministries of the Attorney General (10), Community and Social Services (10), Health and Long-Term Care (eight) and Consumer and Business Services (six). The agencies with the highest number of personal information appeals included the Ontario Human Rights Commission (five), the Workplace Safety and Insurance Board (five), the Ontario Rental Housing Tribunal (two), Sheridan College of Applied Arts and Technology (two), and the Workplace Safety and Insurance Appeals Tribunal (two).

Of the 189 municipal personal information appeals received, 135 (71 per cent) involved police services, 37 (20 per cent) involved municipalities, and six (three per cent) involved boards of education. Eleven appeals (six per cent) involved other types of municipal institutions.

Sixty-six per cent of personal information appeals were related to the exemptions claimed by institutions in refusing to grant access. An additional five per cent concerned exemptions plus other issues. Nine per cent of personal information appeals were the result of deemed refusals to provide access, in which the institution did not respond to the request within the time frame required by the *Acts*. In about 10 per cent of appeals, the issue was whether the institution had conducted a reasonable search for the records requested, and in about two per cent of appeals, the issue was whether the request had been frivolous or vexatious. The remaining appeals were related to fees, interim decisions, time extensions and various other issues.

In comparing municipal and provincial appeals, municipal personal information appeals were slightly more likely to involve deemed refusals or exemptions and provincial personal information appeals were more likely to involve the reasonableness of the search for records or other issues.

Of the provincial institutions, the Workplace Safety and Insurance Board had the highest number of deemed refusals (four), and the Ministry of Community Safety and Correctional Services had the next highest number (two). Of the municipal institutions, the Toronto Police Services Board had the highest number of deemed refusal appeals (seven). No other provincial or municipal institution had more than one deemed refusal in 2004.

Since personal information appeals, by definition, relate to a request for access and/or correction of one's own personal information, all appellants were categorized as individuals. Lawyers (75) or agents (14) represented appellants in 27 per cent of the personal information appeals made in 2004.

In 2004, $2,186 in application fees for personal information appeals was paid to the IPC.

Number of Privacy Complaints Closed 1999-2004

	Provincial	*Municipal*	*Non-jurisdictional*	*Total*
1999	40	48	0	88
2000	39	41	2	82
2001	61	28	6	95
2002	54	38	7	99
2003	66	60	2	128
2004	74	41	11	126

Privacy Complaints by Type of Resolution

	Provincial	%	*Municipal*	%	*Non-jurisdictional*	%	*Total*	%
Screened out	8	10.8	3	7.3	11	100	22	17.4
Abandoned	2	2.7	0	0	0	0	2	1.6
Withdrawn	9	12.2	5	12.2	0	0	14	11.1
Settled	4	5.4	3	7.3	0	0	7	5.6
Informal Resolution	40	54.1	24	56.1	0	0	63	50.0
Report	11	14.8	7	17.1	0	0	18	14.3
Total	74	100	41	100	11	100	126	100

Source of Complainants

	Provincial	%	*Municipal*	%	*Non-jurisdictional*	%	*Total*	%
Individual	42	56.8	34	82.9	11	100	87	69.0
IPC Commissioner Initiated	32	43.2	7	17.1	0	0	39	31.0
Total	74	100	41	100	11	100	126	100

Privacy Complaints by Type of Resolution and Stage Closed

	Intake	%	*Investigation*	%	*Total*	%
Screened out	22	21.8	0	0	22	17.4
Abandoned	2	2.0	0	0	2	1.6
Withdrawn	14	13.9	0	0	14	11.1
Settled	0	0	7	28.0	7	5.6
Informal resolution	63	62.3	0	0	63	50.0
Report	0	0	18	72.0	18	14.3
Total	101	100	25	100	126	100

Issues* in Privacy Complaints

	Provincial	%	*Municipal*	%	*Non-jurisdictional*	%	*Total*	%
Disclosure	57	75.0	25	54.3	1	9.1	83	62.4
Collection	8	10.6	11	23.9	10	90.9	29	21.8
Use	2	2.6	3	6.6	0	0	5	3.8
Security	5	6.6	2	4.3	0	0	7	5.3
Retention	2	2.6	0	0	0	0	2	1.5
Disposal	0	0	1	2.2	0	0	1	0.7
Access	0	0	0	0	0	0	0	0
Personal information	0	0	0	0	0	0	0	0
Notice of collection	0	0	2	4.3	0	0	2	1.5
General privacy	2	2.6	1	2.2	0	0	3	2.3
Right of correction	0	0	1	2.2	0	0	1	0.7
Total	76	100	46	100	11	100	133	100

** The number of issues does not equal the number of complaints closed, as some complaints may involve more than one issue.*

Outcome of Issues* in Privacy Complaints

	Provincial	%	*Municipal*	%	*Non-jurisdictional*	%	*Total*	%
Did not comply with the *Act*	4	5.3	3	6.5	0	0	7	5.3
Complied with the *Act*	7	9.2	5	10.9	0	0	12	9.0
Act does not apply	7	9.2	3	6.5	11	100	21	15.8
Resolved – Finding not necessary	56	73.7	32	69.6	0	0	88	66.1
Complied in part	2	2.6	3	6.5	0	0	5	3.8
Total	76	100	46	100	11	100	133	100

** The number of issues does not equal the number of complaints, as some complaints involve more than one issue.*

Privacy Complaints by Type of Resolution and Stage Closed

Issues[1] in Privacy Complaints

Outcome of Issues[1] in Privacy Complaints

Issues in Personal Information Appeals

Outcome of Appeals Closed by Order

Outcome of Appeals Closed Other Than by Order

Issues in Personal Information Appeals

	Provincial	%	*Municipal*	%	*Total*	%
Exemptions	88	65.2	125	66.1	213	65.8
Exemptions with other issues	4	3.0	13	6.9	17	5.2
Deemed refusal	11	8.1	19	10.0	30	9.3
Reasonable search	17	12.6	17	9.0	34	10.5
Fees	3	2.2	2	1.1	5	1.5
Time extension	1	0.7	1	0.5	2	0.6
Interim decision	1	0.7	1	0.5	2	0.6
Frivolous/vexatious request	0	0	5	2.7	5	1.6
Correction	0	0	1	0.5	1	0.3
Third party	2	1.5	2	1.1	4	1.2
Other	8	6.0	3	1.6	11	3.4
Total	135	100	189	100	324[1]	100

This table does not include one non-jurisdictional personal information appeal filed in 2004. The issue in this appeal was classified as "other."

Outcome of Appeals Closed by Order

Municipal

Head's Decision

Total 51

Provincial

Head's Decision

Total 47

Outcome of Appeals Closed Other Than by Order

Municipal

Total 129

Provincial

Total 113

APPEALS CLOSED

The IPC **closed** 341 personal information appeals during 2004. Of these, 160 (47 per cent) concerned provincial institutions, while 180 (53 per cent) concerned municipal institutions. The IPC closed one non-jurisdictional personal information appeal during 2004.

Seventy-one per cent of personal information appeals were closed without the issuance of a formal order. Of the appeals closed by means other than an order, 11 per cent were screened out, 55 per cent were mediated in full, 28 per cent were withdrawn, four per cent were abandoned, and one per cent dismissed without an inquiry. Of the 107 personal information appeals that were not mediated in full and went on to adjudication, 66 appeals (62 per cent) were mediated in part during the mediation stage.

Of the 341 personal information appeals closed in 2004, 28 per cent were closed during the intake stage, 41 per cent were closed during the mediation stage, and 31 per cent were closed during the adjudication stage.

- Of the appeals closed during the intake stage, 59 per cent were withdrawn, 30 per cent were screened out, eight per cent were abandoned, and three per cent were closed by issuing a formal order;
- Of the appeals closed during the mediation stage, 95 per cent were mediated in full, two per cent were closed by issuing a formal order and three per cent were withdrawn;
- Of the appeals closed during the adjudication stage, 86 per cent were closed by issuing a formal order, six per cent were withdrawn, three per cent were abandoned, two per cent were mediated in full and three per cent were dismissed without an inquiry.

In 2004, 29 per cent of personal information appeals were **closed** by issuing an order. The IPC issued a total of 94 final orders for personal information appeals – 45 provincial and 49 municipal[1]. In addition, the IPC issued four interim orders – two provincial and two municipal.

In appeals resolved by order, the decision of the head was upheld in 65 per cent and partly upheld in 19 per cent of cases. The head's decision was not upheld in nine per cent of the personal information record appeals closed by order. Six per cent of the orders issued in 2004 had other outcomes. In comparing the outcomes of provincial and municipal orders, the decision of the head was almost equally likely to be upheld or partly upheld for both municipal and provincial orders. The head's decision was somewhat more likely not to be upheld in provincial orders.

1 The number of appeals closed by order exceeds the number of orders, since one order may close more than one appeal.

Outcome of Appeals by Stage Closed

Outcome of Appeals by Stage Closed

HIGH PROFILE PRIVACY INCIDENTS

MANAGEMENT BOARD SECRETARIAT AND THE MINISTRY OF FINANCE (PC-040077-1 AND PC-040078-1)

The Commissioner tabled a *Special Report to the Legislative Assembly of Ontario on the Disclosure of Personal Information by the Shared Services Bureau of Management Board, and the Ministry of Finance* on December 16.

The Ontario government has a number of programs that involve the mailing of cheques to individuals. The cheques for some programs are printed at the iSERV data centre in Downsview and mailed out by the Shared Services Bureau (the SSB) of Management Board Secretariat (MBS).

The IPC was notified by both the Ministry of Finance (ministry) and MBS about a breach of the *Freedom of Information and Protection of Privacy Act* (the *Act*) that occurred with the November 30, 2004 mailout of cheques for the Ontario Child Care Supplement for Working Families (OCCS) program under the ministry.

The majority of individuals who receive an OCCS payment receive it through a direct deposit of funds into their bank accounts. The other individuals receive payment by way of a cheque that is mailed out on a monthly basis. For recipients who receive their supplement by direct deposit, no cheque stub is issued. The ministry advised that each of the approximately 27,000 cheques that were mailed out on November 30, 2004 contained the recipient's name, address, amount paid and Social Insurance Number (SIN), along with four additional digits directly following the SIN. However, for the majority of the cheques, the counter-foil (the cheque stub) contained the name and SIN of the recipient as well as the name, address, and the SIN, along with four additional digits, of another recipient. Seven cheque stubs contained various computations of the same type of information. As a result, the IPC initiated a privacy investigation under the *Act*.

The investigation included numerous meetings with the ministry and MBS, as well as a site visit to the iSERV facility in Downsview by IPC staff. The ministry and MBS fully co-operated with the IPC throughout our investigation.

The investigation determined that the incident was triggered as a consequence of a software system enhancement to the payment-processing application used by the ministry and MBS. It is the ministry's view that the source of the problem was human error in the implementation of a computer software upgrade, which caused a spacing problem in the printing of each cheque stub, resulting in information about the next recipient being added to the stubs, in the majority of cases.

The investigation concluded that the disclosure of another individual's personal information to recipients of the cheques was not in compliance with the *Act*. All persons affected by the disclosure, with the exception of two individuals who could not immediately be reached, were notified by the ministry and the source of the technical problem was addressed.

The Commissioner commended the ministry, which had provided the information for the cheques, and MBS, of which the SSB is a unit, for immediately notifying her office of the privacy breach and the quick steps that both undertook to notify the cheque recipients about the problem. However, "the absence of controls and the existence of control weaknesses" within SSB "contributed to and exacerbated the problem," said the Commissioner. "In addition, the absence of a manual inspection having been conducted on the cheques produced, to ensure the accuracy of all the information appearing on the cheques and cheque stubs, was another obvious weakness in the process."

As part of her special report, the Commissioner cited 10 other privacy breaches involving the SSB, including online issues and employee pay stubs. While each involved a small number of people – and a number of program or other changes were made on the government's initiative and on the recommendations of the IPC – the series of breaches concerned the Commissioner.

As a result, the Commissioner recommended that:

- A comprehensive and independent end-to-end audit of SSB functions, operations and privacy practices that involve the handling of personal information be conducted and that this audit report be made available to the public;
- The government discontinue the use of the SIN and create a purpose-specific unique identifier for each individual to replace the use of the SIN; and
- Pending the outcome of the independent audit, MBS ensure, before each monthly printing of cheques is started, a short trial run is conducted on the printer to be used, with the test cheques manually inspected.

MBS acted immediately on the Commissioner's recommendations, in addition to taking the following steps:

- Examining closely the feasibility of appointing a Chief Privacy Officer (CPO), who would recommend how government can strengthen its policies and practices to ensure the protection of personal information in all government operations (the Commissioner had recommended the appointment of a CPO in the *Blueprint for Action* section of her 2003 annual report);
- Completing an ongoing internal audit and implementing its recommendations; and
- Advising the IPC of all progress in completing these actions.

CITY OF PETERBOROUGH

In 2001, the IPC published *Guidelines for Using Video Surveillance Cameras in Public Places* (the *Guidelines*) to assist government organizations in deciding whether the collection of personal information by means of a video surveillance system is justifiable as a policy choice, and if so, how privacy-protective measures can be built into the system.

A group of individuals complained to the IPC in 2004 that the City of Peterborough (the city) was violating the *Guidelines* as there were no signs advising the public about the presence of video surveillance cameras in Millennium Park. The complainants were also concerned that the city might be violating other parts of the *Guidelines* at this site as well as at others.

The IPC initiated a review of the video surveillance programs in Millennium Park (the park), the Peterborough Centennial Museum and Archives (the museum) and the Peterborough Marina (the marina) to assess whether the surveillance programs were in compliance with the *Guidelines*.

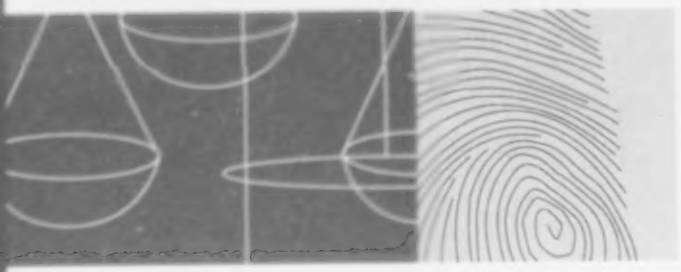
The IPC learned that there are six video surveillance cameras in Millennium Park, one camera on the outside of the marina and two located at the museum. They were primarily introduced to prevent vandalism. At the time of the IPC's site visit, there were no signs in the park notifying the public about the presence of video surveillance. The IPC was advised that signs were installed, but had been stolen. There were signs at the other locations.

The IPC found several instances in which the city was not in compliance with the *Guidelines* and made nine recommendations. The IPC also noted that although the video surveillance systems offered some privacy-enhancing features, such as the absence of active camera monitoring, adherence to privacy-protective practices is critical in ensuring that the personal information collected by video surveillance is compliant with the *Guidelines*.

Highlights of the IPC's recommendations involved the city taking steps to do the following:

- Installing signs in the park and bringing existing signs at the other sites into compliance;
- Taking additional steps to ensure the security of stored videotapes;
- Updating information sheets and making information about the video surveillance systems publicly available;
- Addressing the park's 10-week retention schedule for stored personal information with a view to reducing the retention time of this information;
- Incorporating regular audits and evaluations into video surveillance practices;
- Revising and updating its written video surveillance policy.

The city was given a series of 2005 deadlines to comply with these recommendations.



JUDICIAL REVIEWS

The courts rendered several decisions in 2004 clarifying the scope of the exemptions under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.

In addition, the courts affirmed that the IPC's decisions are entitled to judicial deference and that the IPC is entitled to participate in judicial reviews of its decisions. However, some uncertainties remain because a number of these decisions are subject to appeal. (All sections cited are from the provincial *Act*, unless otherwise specified.)

(1) In two cases heard together in 2004, the Divisional Court upheld three IPC decisions ordering disclosure of evaluation reports relating to the expenditure of public funds: one involving bids on highway construction projects and the other involving northern development grants. In both cases, the Court affirmed that it will defer to the IPC's greater expertise in interpreting and applying the exemptions.

In the first case, the Court held that the IPC was reasonable in finding that evaluation scores assigned by the Ministry of Transportation to measure contractors' technical qualifications were essentially factual in nature and in rejecting the ministry's claims that the scores were exempt as "advice" to government under section 13. The IPC was also reasonable in holding that the "third party" exemption at section 17 did not apply because the scores were generated by the ministry and were not "supplied" by contractors. Finally, the Court agreed with the IPC that the ministry's evidence fell short of establishing that disclosure would permit contractors to manipulate the bidding process and thus cause harm to the ministry's economic interests as contemplated by the section 18 exemption.

The second case involved a request for disclosure of evaluation reports prepared by staff at the Ministry of Northern Development and Mines and used by a funding board in deciding whether to fund projects promoting tourism and development in Northern Ontario. Again, the Court held that the IPC was reasonable in finding that the "options" and "pros and cons" portions of the reports were not "advice" within the meaning of section 13 because this material was factual and did not reveal a suggested course of action put forward by ministry staff.

The Divisional Court's decisions in both these cases have been appealed by the ministries concerned to the Ontario Court of Appeal.

(2) In another case involving public expenditures, the Divisional Court upheld two IPC decisions ruling that the Ministry of the Attorney General could not claim either solicitor-client privilege under section 19 or personal privacy under section 21 to withhold the amount of legal fees it paid to lawyers representing two individuals in high profile court cases. One decision involved the amount the ministry paid to lawyers appointed by the court to represent a client in his appeal of first degree murder convictions. The second decision involved the amount the ministry paid under court orders to lawyers retained to protect this client's interests in the trial of his former lawyer on obstruction of justice charges. The Divisional Court agreed with the IPC that aggregate summaries of the amounts were not privileged because they were not "communications," but rather were "neutral" facts that did not reveal client confidences. In addition, the IPC was reasonable in holding that: (a) disclosure of the amounts paid in the appeal was not an unjustified invasion of the client's privacy due to the high profile nature of the case; and (b) the total amount paid in the other case was not personal information because it could not be broken out as between this individual and another client. Finally, the Court rejected the ministry's argument that it should deny the IPC standing to make submissions supporting its decisions on judicial review. The ministry has appealed this decision.

(3) In another case involving solicitor-client privilege, the Divisional Court found that the IPC erred in failing to apply the section 19 exemption to training and instruction manuals for the conduct of default proceedings under the *Family Responsibility and Support Arrears Enforcement Act*. The manuals were prepared by the Family Responsibility Office, which falls under the auspices of the Ministry of Community and Social Services, for use by outside lawyers retained to handle family support cases. The IPC relied on section 33(1) which requires institutions to make guidelines and instructions for the enforcement of a public statute available to members of the public. Since the manuals

were general in nature and did not relate to any specific legal proceeding, the IPC held they were not the proper subject of the privilege. The Court rejected the IPC's view. It held that because all of the records were created and used to advise and instruct lawyers conducting legal proceedings, they were protected from disclosure by solicitor-client privilege.

(4) In an area traditionally considered to be within the IPC's specialized expertise, the Divisional Court corrected an apparent misapplication of one of its earlier rulings in a case involving access to public registries of personal information. In the earlier case, the Court held that the privacy exemption at section 14 of the *Municipal Freedom of Information and Protection of Privacy Act* did not apply to an electronic database containing the personal information of individual contributors to candidates in a municipal election, even though substantial privacy interests are implicated in the bulk disclosure of personal information in electronic form. In the later case, the Court found that the IPC erred in applying the Court's reasoning from that earlier ruling to order disclosure of a province-wide electronic database of personal information contained in municipal assessment rolls. The Court distinguished the cases on two grounds. First, the municipal assessment corporation that created the province-wide database was not governed by the statutory public inspection scheme that applied to paper copies of the rolls maintained by each municipality. Second, individual privacy interests should properly yield for public accountability purposes where a news reporter seeks to scrutinize the election process; however, they should not yield for the private commercial purposes of a collection agency seeking the assessment database.

(5) Ontario's Court of Appeal issued an important ruling in 2004 overturning the Divisional Court and restoring an IPC decision limiting government's discretion to refuse to confirm or deny the existence of a record under the privacy exemption at section 21. The question arose in the context of two news media requests for documents relating to the possible settlement of a benefits claim brought by an individual against the Ministry of Health and Long-Term Care. The IPC ruled that the ministry could invoke its discretion under section 21(5) only if disclosure of the mere existence or non-existence of an alleged settlement agreement would unjustly invade the individual's privacy, which the IPC found it would not. The Divisional Court held that the IPC's interpretation unreasonably circumvented the legislature's inten-

Outstanding Judicial Reviews as of December 31, 2004: 25

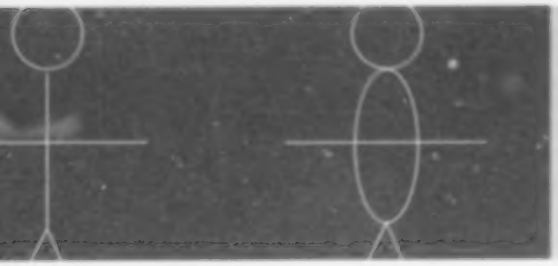
New applications received in 2004: 11

Judicial Reviews Closed/Heard in 2004: 14

1. Abandoned (Order Stands): PO-2678, MA-020469-1, PO-2115, PO-2269, MA-020497-2, MO-1769
2. Abandoned (Order Stayed): PO-2258, PO-2269, PO-2326-R, PO-1998
3. IPC Order Upheld: MO-1614, MO-1978-I, MO-1998-R
4. IPC Order Not Upheld: PO-1998, MO-1691, PO-2008

tion to create "airtight" privacy protection. The Court of Appeal, on the other hand, found that the IPC's interpretation reasonably constrained the ministry's discretion in a way that appropriately balanced access and privacy rights in cases where such confirmation would not unjustifiably invade an individual's privacy. The ministry has sought leave to appeal this decision to the Supreme Court of Canada.

(6) Finally, the constitutional validity of certain omissions from the *Act* was examined by the Divisional Court in light of their alleged infringement on the freedom of expression protected at section 2(b) of the *Canadian Charter of Rights and Freedoms*. The Criminal Lawyers' Association (CLA) sought records relating to an investigation by the Ontario Provincial Police into alleged misconduct by police and Crown prosecutors investigating and prosecuting murder charges against two individuals. The IPC upheld the decision of the Ministry of Public Safety and Security refusing to disclose these records under exemptions for law enforcement, solicitor-client privilege and personal information at sections 14, 19 and 21. The IPC went on to hold that there was a compelling public interest in disclosure of the records under section 23 of the *Act*, which would override the privacy exemption at section 21, but not the other exemptions at sections 14 and 19 because these latter sections were not specified in the override provision. The CLA was ultimately unsuccessful in persuading the IPC and the Divisional Court that its freedom of expression was infringed by the legislature's decision not to include sections 14 and 19 within the public interest override. Even if section 23 did infringe the CLA's freedom of expression, the Court held that this breach would not be unconstitutional because the statute's objectives were pressing and substantial and any impairment of the right was minimal and proportional to those objectives. The CLA has been granted leave to appeal this decision to the Ontario Court of Appeal.



WORKING TOGETHER

As part of its Institutional Relations Program, the IPC's Tribunal Services Department works collaboratively each year with selected municipal and provincial organizations as part of its ongoing efforts to:

- gain a better understanding of the business of our institutional clients in order to deal more effectively with appeals and complaints; and
- provide IPC mediators and institutional staff with an opportunity to better understand each other's roles and needs, and develop more productive relationships.

Among the special meetings or joint projects in 2004 were the following:

SPECIAL MEETING PROMOTING MEDIATION

Mediation is the preferred method of dispute resolution at the IPC for both appeals and privacy complaints. The IPC is committed to promoting the benefits of mediation to our clients by way of meeting with co-ordinators and their staff. In October 2004, we invited various municipal and provincial co-ordinators and their staff to meet jointly with our entire mediation team to discuss the benefits of mediation in general, the different approaches taken in mediating appeals and privacy complaints, and to share our mediation successes.

FREEDOM OF INFORMATION POLICE NETWORK

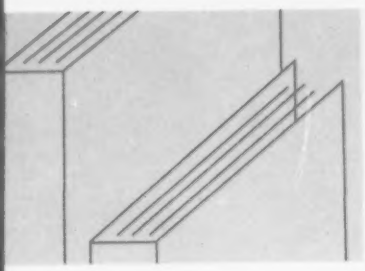
The IPC accepted an invitation from the Freedom of Information Police Network to have senior staff speak at its spring meeting and training workshop. This workshop is attended by co-ordinators and their staff from local police services across the province and from the Ontario Provincial Police. The IPC took this opportunity to give a presentation on an IPC paper entitled *Fees, Fee Estimates and Fee Waivers* for requests under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.

JOINT PAPER ON MEDIATING APPEALS

The IPC and the Ministry of the Attorney General completed their work in 2004 on a joint publication, *Best Practices for Institutions in Mediating Appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act*. (This paper and the one below are available on the IPC website, **www.ipc.on.ca**.)

ELECTRONICALLY PROCESSING FOI REQUESTS

Also in 2004, the IPC completed work with the Ministry of Natural Resources on an educational tool, *The Advantages of Electronically Processing Freedom of Information Requests: The MNR Experience*.



OUTREACH PROGRAM

The IPC has a vibrant outreach program to help meet its mandate to educate the public about Ontario's access and privacy laws and increase the public's awareness of access and privacy issues.

The five core components of the outreach program include:

- the public speaking program;
- the schools program;
- the publications program
- the media relations program; and
- the IPC's website.

For the latter part of 2004, the IPC focused on the *Personal Health Information Protection Act (PHIPA)* – Ontario's first new privacy *Act* in nearly 14 years – which came into effect Nov. 1, 2004. Commissioner Ann Cavoukian and Ken Anderson, Assistant Commissioner for Privacy, met with the leaders of Ontario's 22 regulatory colleges for health professionals – from the College of Physicians and Surgeons to the College of Pharmacists to the College of Chiropractors, to name a few – and with professional associations. The Commissioner and senior staff also made numerous presentations across Ontario to health professionals and other groups impacted by *PHIPA*. As well, the IPC participated fully in a series of information sessions on *PHIPA* that the Ministry of Health and Long-Term Care scheduled in major cities across Ontario last fall.

Speeches and Presentations

Commissioner Cavoukian made 45 presentations in 2004, primarily as the keynote speaker at major conferences and as a guest at universities for special presentations. The Commissioner addressed, among others, the International Association of Privacy Professionals, the Ontario Hospital Association, the annual Privacy and Data Security Summit in Washington, D.C., the Corporate State Canada, the Information Technology Association of Canada, the Ontario Bar Association and more than a dozen other conferences or seminars for health professionals.

Many of the presentations outside the health information privacy sphere focused on issues such as technology and security and their impact on privacy.

Among the other segments of the IPC's speakers' program are:

- the *Reaching Out to Ontario* program, where a team of speakers visits different regions of Ontario each year for a series of presentations. For the first time, the IPC focused on Toronto in 2004, aside from a series of presentations in Kenora. In 2005, the IPC returns to visiting communities across Ontario, with presentations in Halton Region, Durham Region and the Timmins area;
- a university program, where members of the IPC's Legal and Policy Departments make presentations to faculty and students in business, technology and law programs;
- a general public speaking program, where IPC staff make presentations on access and privacy to various groups or organizations.

Schools Program

The IPC has a very successful schools program, entitled *What Students Need to Know About Freedom of Information and Protection of Privacy*. It includes teacher resources tailored to the Grade 5 curriculum of government studies and the Grade 10 civics course, as well as resources for Grade 11-12 history and law teachers. In addition, IPC staff make presentations to approximately 40 Grade 5 classes every school year.

The three teachers' guides developed by the IPC with the aid of curriculum experts and classroom teachers, and brochures that describe the guides, are available on the IPC's website at: **www.ipc.on.ca**

Since the program was launched late in 1999, with the release of the guide for Grade 5 teachers, thousands of copies of the guides have either been sent to teachers or downloaded from the website.

IPC Publications

In 2004, the IPC released 18 publications on access or privacy topics, including, in the latter part of the year, seven publications aimed at focusing attention on Ontario's new health information privacy law, *PHIPA*. These included *Frequently Asked Questions: Personal Health Information Protection Act*, which provides a general overview of the *Act*, and *A Guide to the Personal Health Information Protection Act*, which was produced to help health care providers understand how *PHIPA* applies to their day-to-day activities.

Among other 2004 publications are *Incorporating Privacy into Marketing and Customer Relationship Management*, a joint report by the IPC and the Canadian Marketing Association, and *Tag, You're It: Privacy Implications of Radio Frequency Identification (RFID) Technology*, an educational tool about this quickly expanding technology and the privacy issues associated with the technology. Among the papers specifically addressing access issues is *Best Practices for Institutions In Mediating Appeals*, a joint publication of the IPC and the Ministry of the Attorney General.

A complete list of the IPC's 2004 publications is in the section that follows this *Outreach* report.

Media Relations

Through its pro-active media relations program, the IPC tries to raise the media's consciousness about access and privacy issues. The program includes meetings with the editorial boards of newspapers, presentations to newsrooms and media students, and the distribution of news releases, IPC papers and other material.

IPC staff also answer media inquiries relating to freedom of information, privacy and the new health information protection legislation.

As the IPC's official spokesperson, the Commissioner gave 60 media interviews in 2004. Overall, the IPC assisted more than 180 journalists who requested interviews, background information or who had general inquiries about access and privacy, including the process for filing freedom of information requests. The Commissioner issued 11 news releases in 2004.

IPC Website

The IPC website (**www.ipc.on.ca**) offers a wide range of information about access and privacy issues and the legislation that applies. It provides answers to common questions, access to IPC publications and orders, links to copies of the *Acts* (including the new *PHIPA*), educational material, news releases, selected speeches, other presentations by IPC staff, forms and more.

More details about the IPC website are cited in a separate report on the website (which follows the *Publications* report).

IPC PUBLICATIONS

The IPC has an extensive publishing program aimed at fostering increased awareness and understanding of various access and privacy-related issues and topics. The papers released in 2004 included:

- *Incorporating Privacy into Marketing and Customer Relationship Management*. This is a joint report by the IPC and the Canadian Marketing Association.
- *Cross-National Study of Canadian and U. S. Corporate Privacy Practices*. This joint report summarizes the findings of a benchmark study – the first of its kind – conducted by the IPC and Ponemon Institute, an Arizona-based "think-tank."
- *Tag, You're It: Privacy Implications of Radio Frequency Identification (RFID) Technology*. This is an educational tool to help the public understand what an RFID is, to help focus attention on the privacy issues, and to advance the privacy principles that need to be considered by businesses during the design and use of this technology.
- *Best Practices for Institutions in Mediating Appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act*. This paper, a joint project of the IPC and the Ministry of the Attorney General, is aimed at government institutions.
- *The Advantages of Electronically Processing Freedom of Information Requests: The MNR Experience*. This educational tool was co-produced by the IPC and the Ministry of Natural Resources.
- *Promoting Transparency through the Electronic Dissemination of Information*. This paper was prepared for the Symposium on E-Governance for the 21st Century, sponsored by the Saskatchewan Institute of Public Policy. It has been included as a chapter in *E-Government Reconsidered: Transformation of Governance for the Knowledge Age*, a book published in April 2004 by the institute.
- The spring 2004 edition of the IPC's bi-annual newsletter, *IPC Perspectives*.
- *Privacy and Access: A Blueprint for Action*, Commissioner Ann Cavoukian's annual report.
- *Guidelines for Using RFID Tags in Ontario Public Libraries*. These guidelines ensure privacy protections are considered during the development of implementation plans.
- The fall 2004 edition of *IPC Perspectives*.
- *Frequently Asked Questions: Personal Health Information Protection Act*. Aimed at the general public, this resource provides specific answers and a general overview of the *Act*, which came into effect Nov. 1, 2004.
- *A Guide to the Health Information Protection Act*. This guide was produced to help health care practitioners and other health information custodians understand their rights and obligations under the new *Act*.
- *Frequently Asked Questions: Health Cards and Health Numbers*. This resource provides general information about the use of Ontario health cards and health numbers.
- *The Personal Health Information Protection Act and Your Privacy*. This plain-language IPC brochure answers basic questions about the *Act*.
- *Your Health Information: Your Rights – Your Guide to the Personal Health Information Protection Act, 2004*. The IPC and the Ministry of Health jointly produced this eight-panel brochure.
- *Access and Correction Complaints – Personal Health Information Protection Act*. This brochure outlines your rights if denied access to your personal health information, or correction of that information.
- *Collection, Use, Disclosure and Other Complaints – Personal Health Information Protection Act*. This brochure explains that, if you feel that a health information custodian has inappropriately collected, used or disclosed your personal health information, or does not have proper information practices in place, you have a right to make a complaint to the IPC.
- *I'm Sorry, this Meeting is Closed to the Public: Why We Need Comprehensive Open Meetings Legislation in Canada*. Assistant Commissioner Tom Mitchinson presented this paper at the annual conference of the Council on Governmental Ethics Laws (COGEL) in San Francisco in December.

IPC publications are available on the IPC's website, **www.ipc.on.ca**, or by calling the Communications Department at 416-326-3333 or 1-800-387-0073 to request copies of specific publications.

WEBSITE

The IPC uses its website as one of its primary communication tools to help meet its mandate to educate the public about Ontario's access and privacy laws and policy issues.

Among the major additions to the website (**www.ipc.on.ca**) in 2004 was a new section devoted to Ontario's first new privacy Act in 14 years, the *Personal Health Information Protection Act*, which came into effect in November 2004.

Overall, there was a significant increase in the number of IPC publications downloaded in 2004. The 234,352 files downloaded represent an increase of 112,545 – or 92.4 per cent – over the 121,807 files downloaded in 2003.

For the third year running, the *Privacy Diagnostic Tool (PDT) Workbook* was the most popular paper. It was downloaded 22,715 times, almost one-tenth of all downloads and nearly twice as many as the next most popular paper, *Guidelines for Using RFID Tags in Ontario Public Libraries*, which was downloaded 12,079 times. The third most popular resource was the IPC's *2003 Annual Report*, downloaded 9,179 times after being released in June.

Although not released until the fall, the IPC's two main publications related to the new privacy legislation – *A Guide to the Personal Health Information Protection Act* and *Frequently Asked Questions: Personal Health Information Protection Act* – were very popular. Together, these two health privacy resources were downloaded 17,122 times, the fourth and fifth most popular files. Over the final quarter of the year, they were the downloaded more than any other papers.

Other popular resources in 2004 included *Tag, You're It: Privacy Implications of Radio Frequency Identification (RFID) Technology*, downloaded 6,871 times, *Consumer Biometric Applications: A Discussion Paper*, downloaded 5,957 times, and *Cross-National Study of Canadian and U.S. Corporate Privacy Practices*, downloaded 4,801 times.

The section of the website that attracted the most visitors was the section devoted to IPC orders and privacy investigation reports. Other popular sections included the educational resources section for teachers.

The IPC is constantly updating and improving the resources available on its website. If you have any comments on the content of the site, please forward them to **info@ipc.on.ca**.

MONITORING LEGISLATION AND PROGRAMS

Part of the mandate of the IPC under the *Acts* is to offer comment on the privacy protection and access implications of proposed government legislative schemes or programs. The IPC takes this mandate very seriously. The following list provides an overview of the work done by the IPC in this area during 2004.

PROVINCIAL CONSULTATIONS

Management Board Secretariat:

- Internet tracking technologies;
- Impact of the U.S. *Patriot Act*;

Ministry of the Attorney General:

- *Remedies for Organized Crime and Other Unlawful Activities Act, 2001*;

Ministry of Community and Social Services:

- Family Responsibility Office;
- Adoption disclosure;

Ministry of Community Safety and Correctional Services:

- Mandatory Reporting of Gunshot Wounds;
- OPP In-Car Video Pilot Project;

Ministry of Consumer and Business Services:

- ServiceOntario;
- Birth Registry;

Ministry of Education:

- Video surveillance in schools;

Ministry of Energy:

- Bill 100, *Electricity Restructuring Act, 2004*;

Ministry of Finance:

- International Fuel Tax Association;

Ministry of Health and Long-Term Care:

- Development and implementation of the *Personal Health Information Protection Act, 2004*;
- Emergency Department Access to Drug History Project;
- Client Registration and Identity Management System (CRIM);
- Creation of Ontario's Health Protection and Promotion Agency;
- Integrated Public Health Information System (iPHIS);
- Smart Systems for Health;

Ministry of Labour:

- Bill 63 - Amendments to the *Employment Standards Act*;

Ministry of Transportation:

- Authorized Requester Program;

Democratic Renewal Secretariat:

- Citizen's Forum Initiative.

MUNICIPAL CONSULTATIONS

Dufferin Peel Catholic District School Board:

- Posting student information on the Internet;

Grand Erie District School Board:

- Video surveillance;

Hamilton Police Service:

- Video surveillance;

Lambton Kent District School Board:

- Video surveillance;

London and Middlesex Housing Corporation:

- Applicant screening process;

Peterborough Victoria Northumberland & Clarington Catholic District School Board:

- Information sharing with service providers;

City of Toronto:

- Video surveillance;

Toronto Police Services:

- Proposed policy re retention of fingerprints and other personal information of people who were not found guilty;

Waterloo Catholic District School Board:

- Video surveillance;

City of Windsor:

- Video Surveillance;

York Region District School Board:

- Sharing information between elementary and secondary schools.

OTHER CONSULTATIONS

Private Members' Bills:

- Bill 123, *Transparency in Public Matters Act, 2004*;

Association of Municipal Managers,

Clerks and Treasurers of Ontario:

- Municipal voters' list.

INDIRECT COLLECTIONS

City of Toronto:

- E-Postcards.

COMPUTER MATCHING ASSESSMENTS

- Ministry of Community and Social Services and the Canada Customs and Revenue Agency;
- Ministry of Community and Social Services and Human Resources Development Canada.

SUBMISSIONS AND SPECIAL REPORTS

- *Special Report to the Legislative Assembly of Ontario on the Disclosure of Personal Information by the Shared Services Bureau of Management Board Secretariat, and the Ministry of Finance;*
- *Submission to the Standing Committee on General Government: Bill 31: Health Information Protection Act.*

ORGANIZATIONAL CHART

FINANCIAL STATEMENT

	2004-2005 Estimates $	2003-2004 Estimates $	2003-2004 Actual $
Salaries and wages	6,541,900	5,761,300	5,555,198
Employee benefits	1,009,000	1,156,400	982,863
Transportation and communications	330,000	180,600	184,845
Services	2,715,800	840,200	1,196,345
Supplies and equipment	511,900	275,400	440,254
Total	**10,758,600**	**8,355,600**	**8,348,891**

Note: The IPC's financial year begins April 1 and ends March 31.

The financial administration Act (the FAA) establishes certain annual limits by the Treasury of Auditor.

APPENDIX I

As required by the *Public Sector Salary Disclosure Act, 1996*, the following chart shows which IPC employees received more than $100,000 in salary and benefits for the calendar year ending December 31, 2004.

Name	Position	Salary Paid	Taxable Benefits
Cavalluzzo, Ann	Commissioner	$176,796.80	$310.12
Anderson, Ken	Assistant Commissioner, Privacy	$197,328.80	$401.80
Besamis, Brian	Assistant Commissioner, Access	$167,271.80	$301.67
Mitchinson, Thomas	Assistant Commissioner	$187,328.80	$401.80
Challis, William	General Counsel	$178,703.75	$401.80
Goldstein, Judith	Legal Counsel	$133,471.25	$215.17
Grossi, David	Legal Counsel	$157,194.06	$269.69
Gurski, Mike	Senior Technology and Policy Advisor	$103,499.63	$167.28
Higgins, John	Senior Adjudicator & Manager of Adjudication	$161,808.64	$274.39
Morrow, Bernard	Adjudicator	$110,954.33	
O'Donoghue, Mary	Manager, Legal Services	$160,054.75	$274.67
Sewell, Shirley	Legal Counsel	$161,328.27	$177.39
Swaigen, John	Adjudicator	$161,530.13	$264.99

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